

6-13-2012

Sky Canyon Properties, LLC v. The Golf Club at Black Rock, LLC Clerk's Record v. 3 Dckt. 39831

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Vol 2 of 6

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

SKY CANYON PROPERTIES, LLC, an Idaho
limited liability company, et al

Plaintiffs/Appellants

vs.

THE GOLF CLUB AT BLACK ROCK, LLC, an
Idaho limited liability company

Defendants / Respondents

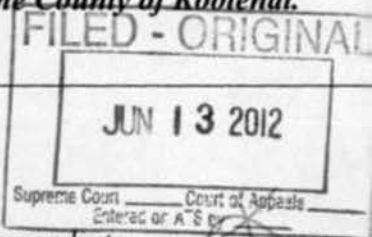
*Appealed from the District Court of the First Judicial District
of the State of Idaho, in and for the County of Kootenai.*

John F. Magnuson
PO Box 2350
Coeur d'Alene, ID 83814

Attorney for Respondents

Peter J. Smith
601 E Front Ave., Ste 502
Coeur d'Alene, ID 83814

Attorney for Appellants



39831
VOLUME 3

Date	Code	User	Judge
4/1/2011	NCOC	HUFFMAN	New Case Filed - Other Claims Benjamin R. Simpson
		HUFFMAN	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Smith, Peter J. (attorney for Sky Canyon Properties LLC) Receipt number: 0014407 Dated: 4/1/2011 Amount: \$88.00 (Check) For: Sky Canyon Properties LLC (plaintiff) Benjamin R. Simpson
	SUMI	LEU	Summons Issued Benjamin R. Simpson
4/15/2011	ACKS	BAXLEY	Acceptance Of Service on 04/15/11 by John F Magnuson for The Golf Club at Black Rock Benjamin R. Simpson
4/21/2011	NOAP	LEU	Notice Of Appearance Benjamin R. Simpson
		LEU	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Magnuson, John F. (attorney for Golf Club At Black Rock, LLC) Receipt number: 0017358 Dated: 4/21/2011 Amount: \$58.00 (Check) For: Golf Club At Black Rock, LLC (defendant) Benjamin R. Simpson
	MNDQ	SREED	Motion To Disqualify Judge Benjamin R. Simpson Benjamin R. Simpson - Magnuson
4/22/2011	ORDR	LARSEN	Order On Defendant's Motion For Disqualification Benjamin R. Simpson
	DISA	LARSEN	Disqualification Of Judge Simpson - Automatic Benjamin R. Simpson
	ORDR	CLAUSEN	Order Assigning District Judge on Disqualification John T. Mitchell Without Cause - John T. Mitchell
5/5/2011	ANSW	LEU	Answer And Counterclaim John T. Mitchell
5/16/2011	HRSC	CLAUSEN	Hearing Scheduled (Scheduling Conference 07/25/2011 04:00 PM) John T. Mitchell
	NOTC	CLAUSEN	Notice of Scheduling Conference John T. Mitchell
5/25/2011	HRVC	CLAUSEN	Hearing result for Scheduling Conference held on 07/25/2011 04:00 PM: Hearing Vacated John T. Mitchell
	STIP	VICTORIN	Stipulation for Scheduling John T. Mitchell
6/3/2011	MISC	CLEVELAND	Plaintiff's Reply to Counterclaim John T. Mitchell
6/6/2011	HRSC	CLAUSEN	Hearing Scheduled (Motion for Summary Judgment 08/15/2011 11:00 AM) 1 HOUR - Magnuson John T. Mitchell
6/27/2011	HRSC	CLAUSEN	Hearing Scheduled (Court Trial Scheduled 02/27/2012 09:00 AM) 2 DAYS John T. Mitchell
	ORDR	CLAUSEN	Scheduling Order, Notice of Trial Setting and Initial Pretrial Order John T. Mitchell
7/14/2011	CONT	CLAUSEN	Hearing result for Motion for Summary Judgment scheduled on 08/15/2011 11:00 AM: Continued 1 HOUR - Magnuson John T. Mitchell
	HRSC	CLAUSEN	Hearing Scheduled (Motion for Summary Judgment 08/24/2011 02:30 PM) Magnuson - 1 Hour John T. Mitchell

Date	Code	User	Judge
7/19/2011	HRVC	CLAUSEN	Hearing result for Motion for Summary Judgment scheduled on 08/24/2011 02:30 PM: Hearing Vacated Magnuson - 1 Hour
	HRSC	CLAUSEN	Hearing Scheduled (Motion for Summary Judgment 09/27/2011 04:00 PM) Magnuson - 1 Hour
7/27/2011	NOTD	CRUMPACKER	Notice Of Intention to Take Deposition Pursuant to Idaho Rules of Civil Procedure Rule 30(b)(6)
9/2/2011	NTSV	CRUMPACKER	Notice Of Service of Plaintiffs 1st Set of Interrogatories & Requests for Production of Documents Propounded to Defendant
9/8/2011	HRSC	CLAUSEN	Hearing Scheduled (Motion for Summary Judgment 11/16/2011 04:00 PM) Peter Smith
	HRVC	CLAUSEN	Hearing result for Motion for Summary Judgment scheduled on 09/27/2011 04:00 PM: Hearing Vacated Magnuson - 1 Hour
9/19/2011	NOTR	BAXLEY	Notice Of Transcript Delivery - Deponent Roger Rummel
10/3/2011	AFFD	CRUMPACKER	Affidavit of John F Magnuson in Support of Motion for Extension of Time within Which to Respond to "Plaintiffs" 1st Set of Interrogatories & Requestes for Production of "Documents Propounded to Defendant
	MOTN	CRUMPACKER	Motion for Extension of Time Within Which to Respond to "Plaintiffs" 1st Set of Interrogatories & Requests for Production of Documents Propounded to "Defendant
10/11/2011	NTSD	CRUMPACKER	Notice Of Discovery
	NTSD	CRUMPACKER	Notice Of Discovery
10/12/2011	NTWD	LEU	Notice Of Withdrawal Of Motion For Extension Of Time Within Which To Respond to "Plaintiffs' First Set Of Interrogatories And Request For Production Of Document Propounded to Defendant"
10/19/2011	MNSJ	BAXLEY	Plaintiffs' Motion For Summary Judgment
	MEMS	BAXLEY	Plaintiffs' Memorandum In Support Of Motion For Summary Judgment
	AFFD	BAXLEY	Affidavit Of Peter J Smith IV
	FILE	BAXLEY	*****New File #2 Created EXPANDO***** (Plaintiffs' Submission Of Certified Documents In Support Of Their Motion For Summary Judgment)
	MISC	BAXLEY	Plaintiffs' Submission Of Certified Documents In Support Of Their Motion For Summary Judgment (In EXPANDO #2)
	NOHG	BAXLEY	Notice Of Hearing on 11/16/11 at 4:00 pm
	MNSJ	BAXLEY	Motion For Summary Judgment (Defendant)

Date	Code	User	Judge
10/19/2011	MEMS	BAXLEY	Memorandum In Support Of Motion For Summary Judgment By Defendant / Counterclaim Plaintiff The Golf Club At Black Rock LLC John T. Mitchell
	AFIS	BAXLEY	Affidavit Of Roger Rummel In Support of Defendant's Motion For Summary Judgment John T. Mitchell
	FILE	BAXLEY	*****New File #3 Created (EXPANDO)***** (Affidavit Of John F Magnuson In Support of Defendant's Motion For Summary Judgment) John T. Mitchell
	AFIS	BAXLEY	Affidavit Of John F Magnuson In Support of Defendant's Motion For Summary Judgment (In EXPANDO #3) John T. Mitchell
	NOHG	BAXLEY	Notice Of Hearing on 11/16/11 at 4:00 pm John T. Mitchell
11/3/2011	MEMO	ZOOK	Memorandum in Opposition to Motion for Summary Judgment of Plaintiff/Counterclaim Defendants John T. Mitchell
	AFFD	ZOOK	Second Affidavit of John F Magnuson in Opppsition to Motion for Summary Judgment of Plaintiff/Counterclaim Defendants John T. Mitchell
11/4/2011	MOTN	BAXLEY	Motion To Strike John T. Mitchell
	NOHG	BAXLEY	Notice Of Hearing Regarding Motion To Strike on 11/16/11 at 4:00 pm John T. Mitchell
	OBJT	BAXLEY	Plaintiffs' Objection To Defendant's Motion For Summary Judgment John T. Mitchell
11/10/2011	MEMO	BAXLEY	Memorandum In Opposition To Plaintiffs' Motion To Strike John T. Mitchell
	MISC	BAXLEY	Reply To Opposition To Motion For Summary Judgment Of Defendant John T. Mitchell
11/16/2011	DCHH	CLAUSEN	Hearing result for Motion for Summary Judgment scheduled on 11/16/2011 04:00 PM: District Court Hearing Held Court Reporter: JULIE FOLAND John T. Mitchell
12/13/2011	MEMO	CLAUSEN	Memorandum Decision and Order on Sky Canyon's Motion to Strike, and on Cross-Motions for Summary Judgment John T. Mitchell
12/14/2011	HRVC	CLAUSEN	Hearing result for Court Trial Scheduled scheduled on 02/27/2012 09:00 AM: Hearing Vacated 2 DAYS John T. Mitchell
12/21/2011	FILE	CRUMPACKER	New File Created #4 (2&3 are expandos) John T. Mitchell
12/22/2011	MCAF	BAXLEY	Defendant's Memorandum Of Costs And Attorney Fees John T. Mitchell
	AFIS	BAXLEY	Affidavit Of John F Magnuson In Support Of Defendant's Memorandum Of Costs And Attorney Fees John T. Mitchell
1/10/2012	STIP	ZOOK	Stipulation John T. Mitchell

Date	Code	User	Judge
2/8/2012	CVDI	LEU	Civil Disposition entered for: Golf Club at Black Rock LLC, Defendant; Donald, Joe K, Plaintiff; Donald, Lisbeth Lillemor, Plaintiff; Fallon, Craig R, Plaintiff; Fallon, M Ellen, Plaintiff; Gianotti, Carolyn M, Plaintiff; Gianotti, Wayne A, Plaintiff; Samuel, Robert C, Plaintiff; Sky Canyon Properties LLC, Plaintiff; Stanley, Buddy C, Plaintiff; Stanley, Judith L, Plaintiff; Wicks, Evelyn L, Plaintiff; Wicks, Russell M, Plaintiff. Filing date: 2/8/2012
	FJDE	LEU	Final Judgment
	STAT	LEU	Case status changed: Closed
2/22/2012	AFFD	HUFFMAN	Affidavit Of Peter J Smith IV In Support Of Motion For Disqualification
	MEMO	HUFFMAN	Memorandum In Support Of Motion For Disqualification
	MOTN	HUFFMAN	Motion For Disqualification
	MOTN	CRUMPACKER	Motion for Reconsideration of Final Judgment entered February 8, 2012
	AFFD	CRUMPACKER	Affidavit of Jay Lockhart in Support of Motion for Reconsideration
2/23/2012	FILE	LEU	New File Created-----#5-----CREATED
3/6/2012	HRSC	CLAUSEN	Hearing Scheduled (Motion to Disqualify 03/27/2012 03:00 PM)
	STAT	CLAUSEN	Case status changed: Reopened
3/7/2012		CLAUSEN	Notice of Hearing
	MEMS	BAXLEY	Legal Memorandum In Support Of Motion For Reconsideration
3/16/2012		SREED	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Miischelle Fulgham Receipt number: 0011995 Dated: 3/16/2012 Amount: \$101.00 (Check) For: Donald, Joe K (plaintiff), Donald, Lisbeth Lillemor (plaintiff), Fallon, Craig R (plaintiff), Fallon, M Ellen (plaintiff), Gianotti, Carolyn M (plaintiff), Gianotti, Wayne A (plaintiff), Samuel, Robert C (plaintiff), Sky Canyon Properties LLC (plaintiff), Stanley, Buddy C (plaintiff), Stanley, Judith L (plaintiff), Wicks, Evelyn L (plaintiff) and Wicks, Russell M (plaintiff)
	BNDC	SREED	Bond Posted - Cash (Receipt 11997 Dated 3/16/2012 for 100.00)
	BNDC	SREED	Bond Posted - Cash (Receipt 11998 Dated 3/16/2012 for 139.75)
	APDC	SREED	Appeal Filed In District Court
	APSC	SREED	Appealed To The Supreme Court
	NOTC	SREED	Notice of Appeal

Date: 4/17/2012

First Judicial District Court - Kootenai County

User: LEU

Time: 11:56 AM

ROA Report

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Sky Canyon Properties LLC, etal. vs. Golf Club at Black Rock LLC

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3/19/2012	AFFD	BAXLEY	Affidavit Of John F Magnuson RE Motion To Disqualify	John T. Mitchell
3/20/2012	MEMO	BAXLEY	Memorandum In Opposition To Motion For Disqualification	John T. Mitchell
	AFFD	BAXLEY	Affidavit Of John F Magnuson RE Motion For Disqualification	John T. Mitchell
3/26/2012	HRSC	CLAUSEN	Hearing Scheduled (Motion 05/30/2012 04:00 PM) Reconsider - Smith	John T. Mitchell
3/27/2012	DCHH	CLAUSEN	Hearing result for Motion scheduled on 03/27/2012 03:00 PM: District Court Hearing Held Court Reporter: JULIE FOLAND	John T. Mitchell
	ORDR	CLAUSEN	Order Denying Motion for Disqualification of Judge Mitchell	John T. Mitchell
3/28/2012	NOHG	CRUMPACKER	Notice Of Hearing	John T. Mitchell
4/2/2012	HRSC	CLAUSEN	Hearing Scheduled (Motion 05/29/2012 09:00 AM) Reconsider - Smith	John T. Mitchell
	HRVC	CLAUSEN	Hearing result for Motion scheduled on 05/30/2012 04:00 PM: Hearing Vacated Reconsider - Smith	John T. Mitchell
		CLAUSEN	AMENDED Notice of Hearing	John T. Mitchell

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Attorney for Defendant/Counterclaim Plaintiff
The Golf Club at Black Rock, LLC

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company; ROBERT
C. SAMUEL, a married man; JOE K.
DONALD AND LISBETH LILLEMOR
DONALD, husband and wife; WAYNE A.
GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29,
1991; RUSSELL M. WICKS AND
EVELYN L. WICKS, husband and wife;
BUDDY C. STANLEY AND JUDITH L.
STANLEY, Trustees of the Stanley Family
Trust dated February 26, 2004; CRAIG R.
FALLON AND M. ELLEN FALLON,
husband and wife,

Plaintiffs,

vs.

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Defendant.

NO. CV-11-2786

**MEMORANDUM IN OPPOSITION
TO PLAINTIFFS' MOTION TO
STRIKE**

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED

2011 NOV 10 PM 4:13

CLERK DISTRICT COURT

Patty Bailey
DEPUTY

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Counterclaim Plaintiff,

vs.

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company; ROBERT
C. SAMUEL, a married man; JOE K.
DONALD AND LISBETH LILLEMOR
DONALD, husband and wife; WAYNE A.
GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
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EVELYN L. WICKS, husband and wife;
BUDDY C. STANLEY AND JUDITH L.
STANLEY, Trustees of the Stanley Family
Trust dated February 26, 2004; CRAIG R.
FALLON AND M. ELLEN FALLON,
husband and wife,

Counterclaim Defendants.

COMES NOW Defendant The Golf Club at Black Rock, LLC (referred to herein as "The Golf Club"), by and through its attorney of record, John F. Magnuson, and respectfully submits this Memorandum in Opposition to the Plaintiffs' "Motion to Strike," filed November 3, 2011. Plaintiffs' Motion seeks to strike certain portions of the Affidavit of Roger Rummel (filed October 19, 2011) and the Affidavit of John F. Magnuson (also filed October 19, 2011). Mr. Rummel's Affidavit will be referred to herein as "the Rummel Affidavit." John F. Magnuson's Affidavit will be referred to herein as "the Magnuson Affidavit." The objections will be addressed in the same order presented in Plaintiffs' "Motion to Strike." For the Court's convenience, attached hereto as

Exhibit A is a copy of Plaintiffs' "Motion to Strike," with the objections renumbered for ease of cross-reference to the discussion herein. The numbered paragraphs set forth below correspond to the interlineated number to the left of each objection contained in the Motion to Strike (Exhibit A).

I. OBJECTIONS TO RUMMEL AFFIDAVIT.

1. Plaintiffs object to the following statement at Paragraph 3 of the Rummel Affidavit:

The Club at Black Rock, LLC was an entity that previously owned certain real property and facilities that were purchased by The Golf Club which give rise to this proceeding.

The objection is lack of foundation and/or calls for a legal conclusion. The Affiant is the Managing Member of The Golf Club. The Affiant was the Rule 30(b)(6) designee of The Golf Club. The Affiant has personal knowledge as to what The Golf Club purchased and from whom. Moreover, the CC&Rs (which have been submitted by both parties and received into evidence without objection) independently confirm that The Club at Black Rock, LLC owned the real property and facilities subsequently purchased by The Golf Club. Further, the Court has received into evidence, with no objection interposed thereto, a copy of the Deed by which The Club at Black Rock, LLC transferred the same real property to Washington Trust Bank (a predecessor-in-title to The Golf Club). See Magnuson Affidavit at Ex. C.

2. Objection was made to the following statement at Paragraph 5 of the Rummel Affidavit:

The Black Rock CC&Rs encumber certain specifically described property (also known as the Black Rock PUD), including certain specifically-defined "Club Property."

The Plaintiffs object as to foundation and hearsay. The information offered was contextual in the context of the Rummel Affidavit. Moreover, the information fairly characterized the C&Rs which

have been received into evidence for all purposes, the same having been offered by both Plaintiffs and Defendant, and neither party having objected thereto. Said CC&Rs define "Property" as including the Black Rock PUD and the "Club Property." See CC&Rs (Magnuson Affidavit at Ex. A) at §§ 2.17 and 2.47.

3. Plaintiffs object to the following statement at Paragraph 5 of the Rummel Affidavit:

The "Club Property," at the time the CC&Rs were recorded, was identified as including a golf course, a golf clubhouse, golf practice facilities, golf maintenance facilities, tennis courts, swimming pool, private beach, and other recreational facilities.

An objection was interposed on the basis of hearsay. The information offered was contextual and is not hearsay. The statement constitutes the recapitulation of the definition of "Club Property," as contained in § 2.17 of the CC&Rs. The CC&Rs, having been admitted into evidence for all purposes, do not constitute an out-of-Court statement. There is no basis for a hearsay objection.

4. Plaintiffs object to the following statement at Paragraph 5 of the Rummel Affidavit

The "Club Property" was made a part of the CC&Rs.

Objections raised were legal conclusion and hearsay. For the reasons set forth in the discussion pertaining to objection No. 3, the objections stated herein should be overruled.

5. Plaintiffs object to the following statement at Paragraph 5 of the Rummel Affidavit:

At the time, "the Club Property" was owned by The Club at Black Rock, LLC.

Plaintiffs object to foundation and/or that the information constitutes a legal conclusion. Mr. Rummel's capacity to speak on behalf of the Defendant, as a Managing Member and the Rule 30(b)(6) designee has been previously addressed. The Court can reasonably infer that Mr. Rummel, as the Managing Member of the party purchasing property subject to the CC&Rs (CC&Rs received

into evidence), has familiarity with the same. Any objection goes to weight and not admissibility. Moreover, the CC&Rs plainly state that they encumber the "Club Property," as defined therein, and there is no basis for an objection that the statement constitutes a legal conclusion.

6. Plaintiffs object to the following statement at Paragraph 6 of the Rummel Affidavit:

The Declarant named in the CC&Rs was Black Rock Development, Inc.

The objection was predicated upon hearsay. For the reasons set forth above, the CC&Rs have been received into evidence for all purposes and a recitation of a portion thereof, by the Affiant, does not constitute an out-of-Court statement but simply contextual information read from an exhibit already received by the Court.

7. Plaintiffs object to the following statement at Paragraph 6 of the Rummel Affidavit:

Black Rock Development, Inc., like The Club at Black Rock, LLC, was an entity that, to my knowledge, was owned and controlled by Marshall Chesrown.

Plaintiffs object as to foundation and legal conclusion. The objection goes to weight and not admissibility. Mr. Rummel was a member of The Club at Black Rock, LLC, and he so testified in his Affidavit. The Golf Club received a conditional assignment of the Declarant rights from Black Rock Development, Inc. That conditional Assignment has been received into evidence, with no objection having been interposed thereto (Magnuson Affidavit at Ex. J). The Assignment clearly states that Mr. Chesrown is the President of Black Rock Development, Inc. That is not a legal conclusion, does not constitute hearsay, and provides adequate foundation for Mr. Rummel's statement.

8. Plaintiffs object to the following statement at Paragraph 8 of the Rummel Affidavit:

Those memberships were in the nature of revocable licenses.

Objection was interposed as to foundation and legal conclusion. Mr. Rummel stated that he held one of the memberships in The Club at Black Rock, LLC. That satisfies the foundation requirement. He presumably has personal knowledge of what he paid for and the rights associated with the same. Moreover, his characterization mirrors the characterization of the current memberships, and an agreement confirming the same has been received into evidence as Exhibit L to the Magnuson Affidavit ("Membership in The Club does not provide a member with an equity or ownership interest or any other property interest in the LLC or the Club facilities. A member only acquires a revocable license to use the Club facilities"). See Magnuson Affidavit at Ex. J, p. 4.

9. Plaintiffs object to the following statement at Paragraph 8 of the Rummel Affidavit

They were not equity interests in the Club Property or the Club itself.

The objection was as to foundation or legal conclusion. The objections are without merit for the reasons set forth in the discussion as to objection No. 8 (the paragraph immediately preceding).

10. Plaintiffs object to the following statement at Paragraph 8 of the Rummel Affidavit

The CC&Rs do not mandate that the Club Property, as part of the PUD, be perpetually devoted to said recreational purposes.

The objection was as to a legal conclusion and hearsay. The CC&Rs have been received into evidence. The hearsay objection fails. The legal conclusion objection similarly fails. Article 17 of the CC&Rs (Magnuson Affidavit at Ex. A, pp. 49-52) specifically provides that the Club Property may be changed or used as the owner thereof sees fit.

11. Plaintiffs object to the Affiant's recitation of Article 17.1 of the CC&Rs. The objection was as to hearsay. The information was offered as contextual information and does not constitute hearsay as the CC&Rs have been admitted for all purposes (and hence there is no "out-of-Court statement" being offered).

12. Plaintiffs object to the Affiant's recitation of Article 17.1 of the CC&Rs. The objection was as to hearsay. The information was offered as contextual information and does not constitute hearsay as the CC&Rs have been admitted for all purposes (and hence there is no "out-of-Court statement" being offered).

13. Plaintiffs object to the following statement at Paragraph 9 of the Rummel Affidavit

Moreover, the Club has the right to change, eliminate, or cease operation of any or all of the Club Property.

Plaintiffs have objected as to legal conclusion and hearsay. The Affiant's statement constitutes a fair summation, for discussion purposes, of the rights held by the owner of the Club Property as detailed in Article 17 of the CC&Rs (pp. 49-52). See Magnuson Affidavit at Ex. A.

14. Plaintiffs object to the following statement at Paragraph 9 of the Rummel Affidavit

This is confirmed at Article 17 of the CC&Rs.

Plaintiffs object as to a legal conclusion and hearsay. The hearsay objection fails for the reasons previously set forth. The CC&Rs have been received into evidence. There is no legal conclusion as the Affiant has accurately recited what the document says.

15. Plaintiffs object to the following statement at Paragraph 10 of the Rummel Affidavit

Our membership interests were memorialized by revocable licenses purchased in the nature of "Membership Agreements."

Objection has been made as to hearsay and legal conclusion. For the reasons set forth in the context of objection No. 8 (above), the objections are without merit.

16. Plaintiffs object to the following statement at Paragraph 10 of the Rummel Affidavit

At some point in time prior to the summer of 2010, operational and financial issues arose with respect to The Club at Black Rock, LLC . . . and Black Rock Development, Inc., the original project developer of the Black Rock PUD and the Declarant named in the CC&Rs.

Objection has been made as to foundation and legal conclusion. It isn't a legal conclusion: if somebody has operational and financial issues, it doesn't take a lawyer or a judge to tell them that. It is a factual statement. As to foundation, Mr. Rummel was a member of The Club at Black Rock, LLC and ultimately a Managing Member of an entity that purchased property that The Club at Black Rock, LLC gave back to its lender through a Deed in Lieu of Foreclosure. Any objection as to foundation goes to weight and not admissibility.

17. Plaintiffs object to the following statement at Paragraph 11 of the Rummel Affidavit

On August 11, 2010, The Club at Black Rock executed a "Non-Merger Warranty Deed in Lieu of Foreclosure" conveying substantially all of the "Club Property" to Washington Trust Bank.

The objection was based on foundation and legal conclusion. The Deed from The Club at Black Rock to WTB was received into evidence without objection (See Magnuson Affidavit at Ex. C). The entity with which Mr. Rummel is associated (the Defendant) purchased the same property from a WTB holding company. Foundation has been adequately established and there is no legal conclusion as the statements relate only to fact.

18. Plaintiffs object to the following statement at Paragraph 11 of the Rummel Affidavit

A copy of that Deed is attached to Mr. Magnuson's Affidavit as Exhibit C.

The objection is stated: lack of foundation. The Deed was attached to the Magnuson Affidavit and has been received into evidence without objection. As the 30(b)(6) designee of the Defendant, and as the Affiant before the Court, it is reasonable for the Court, as the trier of fact, to conclude that the Defendant is familiar with what it has submitted to the Court in support of its request for relief. The “lack of foundation” objection strains credulity and has no basis.

19. Plaintiffs object to the following statement at Paragraph 11 of the Rummel Affidavit

Contemporaneously therewith, Black Rock Development, as Declarant under the CC&Rs, executed a recordable Assignment of Declarant Rights under the CC&Rs to Washington Trust Bank.

The objection interposed is lack of foundation. The contemporaneous assignment of Declarant rights, executed by Black Rock Development, has been received into evidence as Exhibit D to the Magnuson Affidavit. No objection was interposed thereto. The Assignment was in fact recorded contemporaneously with the “Non-Merger Warranty Deed in Lieu of Foreclosure” recorded as Exhibit C.

20. Plaintiffs object to the following statement at Paragraph 11 of the Rummel Affidavit

A copy of that Assignment is attached to Mr. Magnuson’s Affidavit as Exhibit D.

The objection is stated: lack of foundation. The Deed was attached to the Magnuson Affidavit and has been received into evidence without objection. As the 30(b)(6) designee of the Defendant, and the Affiant before the Court, it is reasonable for the Court, as the trier of fact, to conclude that the Defendant is familiar with what it has submitted to the Court in support of its request for relief. The “lack of foundation” objection has no basis.

21. Plaintiffs object to the following statement at Paragraph 12 of the Rummel Affidavit

Washington Trust Bank thereafter deeded the "Club Property" to West Sprague Avenue Holdings, LLC, a Washington Trust Bank holding company.

The objections interposed are lack of foundation and legal conclusion. The Deed from WTB to West Sprague Avenue was received into evidence, with no objection having been interposed thereto, as Exhibit E to the Magnuson Affidavit. The Deed confirms the statement and simply sets forth facts that do not constitute a legal conclusion.

22. Plaintiffs object to the following statement at Paragraph 12 of the Rummel Affidavit

A copy of the Deed is attached to Mr. Magnuson's Affidavit as Exhibit E.

The objection is as to lack of foundation. For the reasons set forth, the discussion related to objection No. 18 above, the objection should fail.

23. Plaintiffs object to the following statement at Paragraph 12 of the Rummel Affidavit

Washington Trust Bank also assigned the Declarant rights it had taken from Black Rock Development, by assignment to West Sprague Avenue Holdings, LLC.

Objections were interposed as to foundation and legal conclusion. The Assignment was received into evidence over no objection. See Magnuson Affidavit at Ex. F. The document states facts which do not constitute legal conclusions and which support the Affiant's averments in Paragraph 12.

24. Plaintiffs object to the following statement at Paragraph 12 of the Rummel Affidavit

A copy of that Assignment is attached as Exhibit F to Mr. Magnuson's Affidavit.

The objection is as to lack of foundation. For the reasons set forth, the discussion related to objection No. 18 above, the objection should fail.

25. Plaintiffs object to the following statement at Paragraph 13 of the Rummel Affidavit

Through that closing, the Golf Club acquired title to the "Club Property" and an Assignment of Declarant Rights under the CC&Rs

....

The objections were interposed as to foundation and legal conclusion. Mr. Rummel is the Managing Member of The Golf Club at Black Rock, LLC. Mr. Rummel was the designated Rule 30(b)(6) designee of The Golf Club. Mr. Rummel can reasonably be presumed to have personal knowledge as to what property the Defendant acquired, when, and from whom. If not, documents already received into evidence, with no objection, confirm the same. See Magnuson Affidavit at Exs. G, H, and I.

26. Plaintiffs object to the following statement at Paragraph 13 of the Rummel Affidavit

Copies of the Deed and Assignment are attached to Mr. Magnuson's Affidavit as Exhibits G and I.

For the reasons set forth in the context of objection No. 18, the objection as to lack of foundation, as to the cited statement, should fail.

27. Plaintiffs object to the following statement at Paragraph 14 of the Rummel Affidavit

There was no Membership Plan in effect at the "Club Property" at the time the Golf Club purchased the same.

An objection was interposed as to lack of foundation and legal conclusion. Mr. Rummel has adequate foundation to make the statement in two respects: he was a member of The Club at Black Rock, LLC, and is a Managing Member of The Golf Club at Black Rock, LLC. He knows whether or not his membership was cancelled and when as to The Club at Black Rock, LLC. Moreover, the fact that said membership was cancelled effective October 31, prior to The Golf Club's purchase of the Club Property (November 1), is independently established by Exhibit M to the Magnuson

Affidavit (received into evidence over no objection). Any remaining objection goes to weight and not admissibility.

28. Plaintiffs object to the following statement at Paragraph 14 of the Rummel Affidavit

The Club at Black Rock had terminated the preexisting Membership Plan prior to the closing.

The objection is interposed as to lack of foundation and legal conclusion. The objection should fail for the reasons set forth in the context of the discussion pertaining to objection No. 27 (in the paragraph immediately preceding).

29. Plaintiffs object to the following statement at Paragraph 14 of the Rummel Affidavit

A copy of the Termination Notice is attached to Mr. Magnuson's Affidavit at Exhibit M.

For the reasons set forth in the context of the discussion related to Paragraph 18 (above), the objection is without merit.

30. Plaintiffs object to the following statement at Paragraph 15 of the Rummel Affidavit

As previously noted, as part of the Golf Club's purchase of the "Club Property" from Washington Trust Bank and West Sprague Avenue Holdings, the Golf Club received an assignment of the Declarant rights under the CC&Rs.

Plaintiffs object as to hearsay and a legal conclusion. For the reasons set forth in the context of the discussion pertaining to objection No. 25, the objection contained in this paragraph should be overruled.

31. Plaintiffs object to the following statement at Paragraph 16 of the Rummel Affidavit

Article 27.7 of the CC&Rs provides that the Declarant rights under the CC&Rs may be assigned by the Declarant (Black Rock Development, Inc.) "to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and

sale.”

Plaintiffs object as to foundation, legal conclusion, and hearsay. The hearsay objection fails. The CC&Rs have been received into evidence. The legal conclusion objection fails. The statement is one of fact and not of law. The foundation objection fails because the Affiant is allowed to read from documents received and admitted into evidence so as to provide context to the positions stated in his Affidavit, particularly given his status as a Rule 30(b)(6) designee and as a Managing Member of the Defendant. The objection is without merit.

32. Plaintiffs object to the following statement at Paragraph 17 of the Rummel Affidavit

. . . and acquired an assignment of the declarant rights from
Washington Trust Bank and West Sprague Avenue Holdings . . .

Objection has been interposed on the basis of legal conclusion. This statement was one of fact. The Golf Club at Black Rock, LLC did receive an Assignment of the Declarant Rights from WTB and West Sprague Avenue Holdings. See Magnuson Affidavit at Ex. I. The terms and conditions under which that Assignment may be enforced are before the Court. However, the fact that The Golf Club did acquire an Assignment of said rights is a statement of fact and the objection is without merit.

33. Plaintiffs object to the following statement at Paragraph 20 of the Rummel Affidavit

For example, pursuant to Article 17.1 of the CC&Rs, the Club has the
right to change the use of the Club property in its discretion.

Objections have been interposed as to foundation, legal conclusion, and hearsay. For the reasons set forth in the discussion related to objection No. 31 above, all of the cited objections should be overruled.

34. Plaintiffs object to the following statement at Paragraph 20 of the Rummel Affidavit

Moreover, Article 16 gives the holder of the declarant rights (which

are claimed by the Golf Club) the authority to develop a portion of the property (including the "Club Property") in such phases as the Declarant deems appropriate. See Article 16.1.2(f).

Objections interposed are lack of foundation, legal conclusion, and hearsay. For the reasons set forth in the discussion of objection Nos. 13 and 14 (set forth above), the objections to the statements contained in Paragraph 20 should be denied.

35. Plaintiffs object to the following statement at Paragraph 21 of the Rummel Affidavit

Further, during the period of declarant control . . . , in accordance with the terms of Article 2.43 of the CC&Rs, the Declarant has the ability to annex additional property into the PUD for sale and development.

Objections were interposed as to foundation, legal conclusion, and hearsay. For the reasons stated in the context of objection No. 31, the objection should be denied. There is no hearsay as this statement is from a document received into evidence. There is no legal conclusion as that is what the document says. As to foundation, the document is in evidence, and the Affiant is the Managing Member of The Golf Club and the Rule 30(b)(6) designee. He has knowledge as to what the Company purchased and under what circumstances.

36. Plaintiffs object to the following statement at Paragraph 21 of the Rummel Affidavit

Article 22.2 provides: "When Declarant has determined that no further property shall be added to the Project, Declarant shall notify the [Black Rock Homeowners] Association in writing.

The objection is hearsay. This statement is not an out-of-Court statement. It is from a document received into evidence (one which the Plaintiffs themselves offered).

37. Plaintiffs object to the following statement at Paragraph 21 of the Rummel Affidavit

Until such notice is given [the notice that no further property will be added by way of Expansion Property], Declarant retains the right to

designate additional property as Expansion Property.

Objections interposed include foundation, legal conclusion, and hearsay. For the reasons set forth in the discussion of objection No. 35, the same result should apply here and the objection should be overruled.

38. Plaintiffs object to the following statement at Paragraph 21 of the Rummel Affidavit

The Declarant retains the right to designate additional property as Expansion Property, and no such notice has been given to the Black Rock Homeowners' Association as would otherwise be required to terminate said right under Article 22.2.

Plaintiffs object as to foundation, legal conclusion, and hearsay. The hearsay objection has been addressed ad nauseam herein. It doesn't apply. The foundation objection has also been addressed ad nauseam. The Affiant is the Rule 30(b)(6) designee of The Golf Club and a Managing Member thereof. Any remaining objections as to foundation goes to weight and not admissibility. As to whether or not this statement constitutes a legal conclusion, the Court can review Article 22.2 and see, independently, that the Affiant has accurately stated what the document says. The objections are without merit.

39. Plaintiffs object to the following statement at Paragraph 22 of the Rummel Affidavit

... as the successor Declarant

Plaintiffs object on the basis that said statement calls for a legal conclusion. That is the only objection of forty that is even arguable. However, the point is that if this Court holds that The Golf Club qualifies as "the Successor Declarant," then The Golf Club will have the rights described in Paragraph 22 of the Rummel Affidavit.

40. Plaintiffs object to the following statement at Paragraph 22 of the Rummel Affidavit

This is consistent with the terms of Article 27.7 of the CC&Rs.

The objections interposed are lack of foundation, legal conclusion, and hearsay. For the reasons set forth in the discussion related to objection No. 38, those objections should be denied.

II. OBJECTIONS TO THE MAGNUSON AFFIDAVIT.

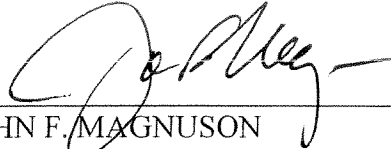
Five objections are interposed to the Magnuson Affidavit. They all relate to the same subject matter: whether the Affiant stated a “legal conclusion” by stating that the Declarant Rights had been assigned by The Club at Black Rock, LLC to Washington Trust Bank, from Washington Trust Bank to West Sprague Avenue Holdings, and from West Sprague Avenue Holdings to The Golf Club at Black Rock, LLC. Objection was further interposed as to Magnuson’s statement that Black Rock Development, Inc. had executed a conditional assignment of Declarant Rights to The Golf Club at Black Rock, LLC.

The fact of the matter is that Assignments of Declarant Rights, as described in Paragraphs 8, 10, 12, 15, and 16 of the Magnuson Affidavit (Objection Nos. 1 through 5 at pp. 5-6 of Exhibit A hereto) were executed and delivered by the parties so stated. See also Magnuson Affidavit at Exs. D, E, I, and J. The legal force and effect of those Assignments is for this Court to determine. However, the Assignments, as a matter of fact, were executed and delivered by and between the parties so stated. The objections should be overruled or limited accordingly.

III. CONCLUSION

Based upon the reasons and authorities set forth herein, Defendant requests that all objections interposed by the Plaintiffs, through their “Motion to Strike” dated November 3, 2011, be denied.

DATED this 10th day of November, 2011.



JOHN F. MAGNUSON
Attorney for Defendant/Counterclaim Plaintiff
The Golf Club at Black Rock, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2011, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Peter J. Smith IV
Lukins & Annis, P.S.
601 E. Front Avenue, Ste. 502
Coeur d'Alene, ID 83814-5155

☒ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ FACSIMILE
664-4125



BR-GOLF CLUB-SKY CANYON-OPP STRIKE.BRF.wpd

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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
limited liability company; ROBERT C.
SAMUEL; JOE K. DONALD AND LISBETH
LILLEMORE DONALD, husband and wife;
WAYNE A. GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29, 1991;
RUSSELL M. WICKS AND EVELYN L.
WICKS, husband and wife; BUDDY C.
STANLEY AND JUDITH L. STANLEY,
Trustees of the Stanley Family Trust dated
February 26, 2004; CRAIG R. FALLON AND
M. ELLEN FALLON, husband and wife,

Plaintiffs,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
an Idaho limited liability company,

Defendant.

NO. CV-2011-2786

MOTION TO STRIKE

MOTION TO STRIKE: 1

0735

Pursuant to Rule 7 and Rule 56 of the Idaho Rules of Civil Procedure, Plaintiffs file this Motion to Strike the portions of the Affidavits of Roger Rummel and John F. Magnuson in Support of Defendant's Motion for Summary Judgment filed on October 19, 2011. The portions of the affidavit to be stricken and the reasons therefore are set forth below.

Affidavit Roger Rummel

	Paragraph	Objectionable Statement	Objection
# 1.	3.	The Club at Black Rock, LLC was an entity that previously owned certain real property and facilities that were purchased by The Golf Club and which give rise to this proceeding.	Lack of foundation; calls for a legal conclusion.
# 2.	5.	The Black Rock CC&Rs encumber certain specifically-described property (also known as the Black Rock PUD), including certain specifically defined "Club Property."	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks for itself.
# 3.	5.	The "Club Property," at the time the CC&Rs were recorded, was identified as including a golf course, a golf clubhouse, golf practice facilities, golf maintenance facilities, tennis courts, swimming pool, private beach, and other recreational facilities.	Hearsay; the document speaks for itself.
# 4.	5.	The "Club Property" was made a part of the CC&Rs.	Calls for a legal conclusion; hearsay; the document speaks for itself.
# 5.	5.	At that time, the "Club Property" was owned by The Club at Black Rock, LLC.	Lack of foundation; calls for a legal conclusion.
# 6.	6.	The Declarant named in the CC&Rs was Black Rock Development, Inc.	Hearsay; the document speaks for itself.
# 7.	6.	Black Rock Development, Inc., like The Club at Black Rock, LLC, was an entity that, to my knowledge, was owned and controlled by Marshall Chesrown.	Lack of foundation; calls for a legal conclusion.
# 8.	8.	Those memberships were in the nature of revocable licenses.	Lack of foundation; calls for a legal conclusion.

MOTION TO STRIKE: 2

#9	8.	They were not equity interests in the Club Property or the Club itself.	Lack of foundation; calls for a legal conclusion.
#10	8.	The CC&Rs do not mandate that the Club Property, as part of the PUD, be perpetually devoted to say recreational purposes.	Calls for a legal conclusion; hearsay; the document speaks for itself.
#11	9.	Article 17.1 of the CC&Rs notes that the golf course "will be privately owned and operated" and is "not a part of the common area"	Hearsay.
#12	9.	The CC&Rs further provide, "The Club has the exclusive right to determine from time-to-time, in its sole discretion and without notice or approval of any change, how and by whom the Club Property shall be used."	Hearsay.
#13	9.	Moreover, the Club has the right to change, eliminate, or cease operation of any or all of the Club Property.	Calls for a legal conclusion; hearsay; the document speaks for itself.
#14	9.	This is confirmed at Article 17 of the CC&Rs.	Calls for a legal conclusion; hearsay.
#15	10.	Our membership interests were memorialized by revocable licenses purchased in the nature of "Membership Agreements."	Calls for a legal conclusion; hearsay.
#16	10.	At some point in time prior to the summer of 2010, operational and financial issues arose with respect to The Club at Black Rock, LLC (the then-owner and operator of the Club Property) and Black Rock Development, Inc., the original project developer of the Black Rock PUD and the Declarant named in the CC&Rs.	Lack of foundation; calls for a legal conclusion.
#17	11.	On August 11, 2010, the Club at Black Rock executed a "Non-Merger Warranty Deed in Lieu of Foreclosure" conveying substantially all of the "Club Property" to Washington Trust Bank.	Lack of foundation; calls for a legal conclusion.
#18	11.	A copy of that Deed is attached to Mr. Magnuson's Affidavit as Exhibit C.	Lack of foundation.
#19	11.	Contemporaneously therewith, Black Rock Development, as Declarant under the CC&Rs, executed a recordable Assignment of Declarant Rights under the CC&Rs to Washington Trust Bank.	Lack of foundation.
#20	11.	A copy of the Assignment is attached as Exhibit D to Mr. Magnuson's Affidavit.	Lack of foundation.
#21	12.	Washington Trust Bank thereafter deeded the "Club Property" to West Sprague Avenue Holdings, LLC, a Washington Trust Bank holding company.	Lack of foundation; calls for a legal conclusion.

MOTION TO STRIKE: 3

#22	12.	A copy of the Deed is attached to Mr. Magnuson's Affidavit as Exhibit E.	Lack of foundation.
#23	12.	Washington Trust Bank also assigned the declarant rights it had taken from Black Rock Development, by assignment, to West Sprague Avenue Holdings, LLC.	Lack of foundation; calls for a legal conclusion.
#24	12.	A copy of that Assignment is attached as Exhibit F to Mr. Magnuson's Affidavit.	Lack of foundation.
#25	13.	Through that closing, the Golf Club acquired title to the "Club Property" and an Assignment of Declarant Rights under the CC&Rs that West Sprague Avenue Holdings had received from Washington Trust Bank (which in turn had received the same from Black Rock Development).	Lack of foundation; calls for a legal conclusion.
#26	13.	Copies of the Deed and Assignment are attached to Mr. Magnuson's Affidavit as Exhibits G and I.	Lack of foundation.
#27	14.	There was no Membership Plan in effect at the "Club Property" at the time the Golf Club purchased the same.	Lack of foundation; calls for a legal conclusion.
#28	14.	The Club at Black Rock had terminated the preexisting Membership Plan prior to the closing.	Lack of foundation; calls for a legal conclusion.
#29	14.	A copy of the Termination Notice is attached to Mr. Magnuson's Affidavit at Exhibit M.	Lack of Foundation.
#30	15.	As previously noted, as part of the Golf Club's purchase of the "Club Property" from Washington Trust Bank and West Sprague Avenue Holdings, the Golf Club received an assignment of the declarant rights under the CC&Rs.	Calls for a legal conclusion; hearsay; the documents speak for themselves.
#31	16.	Article 27.7 of the CC&Rs provides that the declarant rights under the CC&Rs may be assigned by the Declarant (Black Rock Development, Inc.) "to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale."	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks for itself.
#32	17.	...and acquired an assignment of the declarant rights from Washington Trust Bank and West Sprague Avenue Holdings...	Calls for a legal conclusion.
#33	20.	For example, pursuant to Article 17.1 of the CC&Rs, the Club has the right to change the use of the Club property in its discretion.	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks for itself.
#34	20.	Moreover, Article 16 gives the holder of the declarant rights (which are claimed by the Golf Club) the authority to develop a portion of the property (including the "Club Property") in such phases as the Declarant deems	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks

MOTION TO STRIKE: 4

	appropriate. See Article 16.1.2(f).	for itself.
#35	21. Further, during the period of declarant control (which extends to July 31, 2021), in accordance with the terms of Article 2.43 of the CC&Rs, the Declarant has the ability to annex additional property into the PUD for sale and development.	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks for itself.
#36	21. Article 22.2 provides: "When Declarant has determined that no further property shall be added to the Project, Declarant shall notify the [Black Rock Homeowners] Association in writing.	Hearsay; the document speaks for itself.
#37	21. Until such notice is given, Declarant retains the right to designate additional property as Expansion Property."	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks for itself.
#38	21. The Declarant retains the right to designate additional property as Expansion Property, and no such notice has been given to the Black Rock Homeowners' Association as would otherwise be required to terminate said right under Article 22.2.	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks for itself.
#39	22. ...as the successor Declarant...	Calls for a legal conclusion.
#40	22. This is consistent with the terms of Article 27.7 of the CC&Rs.	Lack of foundation; calls for a legal conclusion; calls for hearsay; the document speaks for itself.

Affidavit of John F. Magnuson

	Paragraph	Objectionable Statement	Objection
#1	8.	Pursuant to said Assignment of Declarant Rights, Black Rock Development, Inc., as Declarant under the CC&R's, assigned the Declarant Rights to Washington Trust Bank.	Calls for a legal conclusion.
#2	10.	...also assigned the rights it had acquired from Black Rock Development, Inc. (the Declarant Rights)...	Calls for a legal conclusion.
#3	12.	...together with the Declarant Rights under the CC&R's previously assigned by Black Rock Development, Inc. to Washington Trust Bank (which in turn assigned the same to West Sprague Avenue Holdings, LLC at the time Washington Trust Bank conveyed the "Club Property" to West Sprague).	Calls for a legal conclusion.

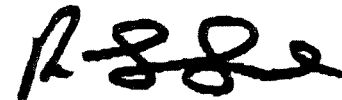
MOTION TO STRIKE: 5

#4 15.	...by which West Sprague Avenue Holdings, LLC assigned to The Golf Club at Black Rock, LLC the Declarant Rights under the CC&R's.	Calls for a legal conclusion.
#5 16.	...assigning whatever Declarant Rights Black Rock Development, Inc. (as Declarant) may have retained under the CC&R's.	Calls for a legal conclusion.

DATED this 3rd day of November, 2011.

LUKINS & ANNIS, P.S.

By



PETER J. SMITH IV
ISB #6997
Attorneys for Plaintiffs

MOTION TO STRIKE: 6

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 3rd day of November, 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

John F. Magnuson
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, Idaho 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy (FAX) 208-667-0500

Honorable John T. Mitchell
Kootenai County Courthouse
324 West Garden Avenue
Coeur d'Alene, Idaho 83814

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PETER J. SMITH IV

MOTION TO STRIKE: 7

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
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CLERK DISTRICT COURT

DEPUTY

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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
limited liability company; ROBERT C.
SAMUEL; JOE K. DONALD AND LISBETH
LILLEMORE DONALD, husband and wife;
WAYNE A. GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29, 1991;
RUSSELL M. WICKS AND EVELYN L.
WICKS, husband and wife; BUDDY C.
STANLEY AND JUDITH L. STANLEY,
Trustees of the Stanley Family Trust dated
February 26, 2004; CRAIG R. FALLON AND
M. ELLEN FALLON, husband and wife,

Plaintiffs,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
an Idaho limited liability company,

Defendant.

NO. CV-2011-2786

REPLY TO OPPOSITION TO
MOTION FOR SUMMARY
JUDGMENT OF DEFENDANT

REPLY TO OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OF DEFENDANT: 1

Plaintiffs submit this reply to DEFENDANT/COUNTERCLAIM PLAINTIFF'S MEMORANDUM IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT filed on November 3, 2011. This Reply is supported by the pleadings and submissions on file, together with the submissions filed by the Plaintiffs in support of their MOTION FOR SUMMARY JUDGMENT (filed October 19, 2011), as well as the submissions filed by the Defendant in support of its MOTION FOR SUMMARY JUDGMENT.

I.

INTRODUCTION

The issue before this Court is clear. Did the Defendant take title to part of the Property "in a bulk purchase for the purpose of development and sale?"¹

II.

ARGUMENT

A. The period of Declarant Control is not in dispute.

Plaintiffs agree with Defendant that the "Period of Declarant Control" is defined by Section 2.43² as follows:

The period beginning on the date of this Declaration is first recorded [July 31, 2001] and ending the earlier of: (a) the date which is twenty (20) years later, or (b) the date on which the Declarant has recorded the plats of all "Expansion Property" and sold ninety percent (90%) of the capital lots to capital owners other than Declarant or builder in each of the plats. . . .

Section 2.43 of Exhibit "2" of the PLAINTIFFS' SUBMISSION OF CERTIFIED DOCUMENTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT ("PSCD").

¹ All capitalized terms are defined in the Declaration. Exhibit "2" of PLAINTIFFS SUBMISSION OF CERTIFIED DOCUMENTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT filed October 19, 2011.

² All references to refer to the Declaration unless indicated otherwise.

If Defendant is the Successor Declarant as permitted by Sections 2.50 and 27.7, then the "Period of Declarant Control" will determine when the Declarant Rights terminate. However, the issue is whether the Defendant is permitted to exercise the Declarant Rights as a Successor Declarant.

B. The Defendant does not qualify as the "Successor Declarant" under Section 2.50 of the Declaration.

Section 2.50 of the Declaration defines "Successor Declarant as any entity:

to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as permitted by Section 27.7 and evidenced by an assignment or deed of record in the office of the recorder of Kootenai County, Idaho, designating such party as a Successor Declarant, signed by the transferor and the transferee. Upon such recording, Declarant's rights and obligations under the Declaration will cease and terminate to the extent provided in such document, and all such rights and obligations shall be transferred to and assumed by the Successor Declarant to the extent provided in such document. (Emphasis added).

It is undisputed that the purported assignment of Declarant Rights was properly evidenced by recorded assignments. The record contains multiple Assignments of Declarant Rights signed by the purported Successor Declarant West Sprague Avenue Holdings, LLC (as successor to Washington Trust Bank) and the Declarant BRD. The dispute is not whether the assignments exist. The dispute is whether they are permitted by Section 27.7.

C. The assignment of rights, obligations or interests of the Declarant violates Section 27.7.

To be effective, any assignment of Declarant Rights must be permitted by Section 27.7.

Section 27.7 states, in its entirety:

Assignment. Declarant may assign all or any part of the special Declarant rights or any of Declarant's other rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development

REPLY TO OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OF DEFENDANT: 3

***and sale.** Such successor will be identified, the particular rights being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the recorder of Kootenai County, Idaho.*

There are three questions raised by Section 27.7:

1. Whether Defendant took title to "part of the Property";
2. Whether Defendant took title to "part of the Property in a bulk purchase"; and
3. Whether Defendant took title to "part of the Property...for the purpose of development and sale."

Each is addressed in turn.

1. **Defendant took title to "part of the Property."**

There is no dispute that Defendant took title to part of the Property. As a successor-in-interest to the property owned by The Club at Black Rock, LLC, Defendant took title to the "Club Property." The Club Property is defined in Section 2.17 as:

All the real Property owned by The Club or its successor or assigns plus all the recreational and social facilities and maintenance facilities constructed thereon, which shall be operated by The Club or its successors or assigns and commonly known as The Club at Black Rock, including without limitation the golf course, the golf clubhouse, golf practice facilities, golf maintenance facilities, tennis courts, swimming pool, private beach, and any other recreational facilities offered by The Club. THE CLUB PROPERTY IS NOT COMMON AREA.

Because Defendant perceives weakness in the argument that it took title to the Club Property in a bulk purchase for the purpose of development and sale, Defendant also argues that it "took title" to "Expansion Property." The Expansion Property is defined in Section 2.31 as follows:

REPLY TO OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OF DEFENDANT: 4

Expansion Property. Such additional real Property now owned or in the future acquired by Declarant (including any Successor Declarant) as Declarant may make subject to the provisions of this Declaration, by duly recorded Declaration of Annexation.

This argument fails for a very simple reason: Defendant did not take title to any Expansion Property “in a bulk purchase for the purpose of development and sale.” Defendant only took title to the Club Property. If the Defendant qualifies as a “Successor Declarant”, it may have the right to add Expansion Property.

2. The acquisition of the Club Property is not a “bulk” purchase.

The argument that the purchase of the Club Property was a “bulk purchase” turns on whether “bulk purchase” is defined in isolation or in the context of Section 27.7. Defendant ask this Court to read “bulk purchase” in isolation. Plaintiffs ask this Court to read “bulk purchase” as a part of Section 27.7.

Defendant argues that it acquired the Club Property in a single transaction, and because the transaction involved multiple tracts of land, it was therefore a “bulk purchase.” However, Defendant’s argument ignores two fundamental principals of contract construction. First, the words used must given a plain and ordinary meaning. Second, the term must be read in context.

There are several definitions of “bulk” and “bulk sale” provided to the Court:

- bulk, adj. (Of goods) not divided into parts <a bulk shipment of grain>. BLACK’S LAW DICTIONARY (9th ed. 2009).
- bulk sale. (1902) A sale of a large quantity of inventory outside the ordinary course of the seller’s business. • Bulk sales are regulated by Article 6 of the UCC, which is designed to prevent sellers from defrauding unsecured creditors

REPLY TO OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OF DEFENDANT: 5

by making these sales and then dissipating the sale proceeds. — Also termed bulk transfer. BLACK'S LAW DICTIONARY (9th ed. 2009).

- Bulk purchasing is buying products in large quantities at a lower price per item, or unit price, than is available for smaller quantities. Wholesale is selling or related to selling goods in large quantities for resale to the consumer. Retailing is buying products in bulk at wholesale, and selling them in small quantities at higher prices. http://en.wikipedia.org/wiki/Bulk_purchasing (last visited November 10, 2011).

Idaho Code contains some helpful definitions as well:

- "Bulk fertilizer" means a fertilizer distributed in a nonpackaged form. Idaho Code § 22-603(11)(a).
- "Bulk" means in nonpackaged form or in packages of one (1) cubic yard or more. Idaho Code § 22-2203(4).

Under its plain and ordinary meaning, bulk means a purchase of a large quantity that is later divided into smaller quantities and sold. The Defendant did not purchase a large quantity of land with the purpose of dividing and selling the real property. The Club Property was purchased to be used a finished unit, not divided up into parts and sold. The Defendant purchased land that is developed as a golf course, golf club house, golf practice facilities, golf maintenance facilities, tennis courts, swimming pool, private beach, and other recreational facilities. This finished product was purchased for the purpose of selling memberships in a golf club. Based on the plain meaning of the term "bulk", the purchase was not a "bulk purchase."

REPLY TO OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OF DEFENDANT: 6

Moreover, the Court must look at the context surrounding the term "bulk purchase." The phrase is used on the context of purchasing, developing, and selling real property. Section 27.7 requires the purchase, development, and sale of real property. Therefore, a "bulk purchase" of a part of the Property means the purchase of land that is not divided into parts or packaged into separate units. After purchase, the land is divided, developed, and sold.

The Defendant purchased land that was divided and developed. There was no "bulk purchase" as the phrase is reasonably defined.

3. **The Club Property was not purchased for "the purpose of development and sale."**

The Defendant admits that the purchase the Club Property was NOT for "the purpose of development and sale." In its Memorandum, the Defendant states:

Moreover, it is undisputed, based upon the portions of deposition testimony of Roger Rummel as cited by Plaintiffs (entirely consistent with the Affidavit testimony of Mr. Rummel), that the Club Property was purchased with dual intentions in mind. First, the primary goal was to develop and sell memberships. Second, if The Golf Club could not be profitably operated, The Golf Club retained the right to develop and sell The Golf Club property proper.

MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT OF PLAINTIFFS/COUNTERCLAIM DEFENDANTS filed November 3, 2011 at page 10 (emphasis added).

This admission settles the argument. The Defendant did not purchase the Club Property for "the purpose of development and sale."

Despite this admission, the Defendant states there is no requirement that the Club Property be actually developed and sold. According to the Defendant, it could develop a golf

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SUMMARY JUDGMENT OF DEFENDANT: 7

club and sell memberships and still fall within the meaning of Section 27.7. The Defendant's argument is not persuasive. Section 27.7 requires the "bulk purchase" of at least part of the "Property" for "the purpose of development and sale" of the Property. The term Property is a noun. It is the thing that must be purchased "in a bulk purchase for the purpose of development and sale." The phrase "for the purpose of development and sale" refers back to the noun: all or part of Property. When read as a whole, the sentence is clear. There is a purchase of property for the purpose of development and sale of that property.

Predictably, the Defendant also argues that it could have more than one purpose for purchasing the Club Property. Section 27.7 of the Declaration states that the purchase must be for "the purpose of development and sale." English has two articles: the and a/an. "The" is used to refer to specific or particular nouns; a/an is used to modify non-specific or non-particular nouns. "The" is referred to the *definite* article and a/an the *indefinite* article. For example, if one says, "Let's read the book," one means a specific book. If one says, "Let's read a book," one means any book rather than a specific book. The same rule applies here. There is a specific purpose for the purchase of all or part of the Property: development and sale.

The Defendant purchased the Club Property for the primary purpose of selling memberships in a golf club – not for the purpose of developing and selling the Club Property.

E. Why the Declarant Rights Matter to the Plaintiffs.

The Court may wonder why the Plaintiffs put forth such effort to establish that the Defendant is not the Successor Declarant as permitted by Section 27.7. The Successor Declarant under the Declaration has powerful rights over each member of the Black Rock Homeowners Association, Inc. Those rights include but are not limited to:

REPLY TO OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OF DEFENDANT: 8

- The right to expand the Black Rock Planned Unit Development to include Expansion Property. Section 1.3.
- To appoint officers and directors of the Association. Section 4.3.
- To cast 10 votes per lot owned. Section 5.2.3.
- To appoint the members of the Design Committee. Section 10.2.
- To appoint Directors of Black Rock Utilities, Inc., that provides the water and sewer services to the Black Rock Community. Article 11.
- To exercise special Declarant rights and additional reserved rights. Article 16.
- To expand the Black Rock project. Section 22.1.
- To amend the Declaration. Section 26.2.

Given these powers, the Plaintiffs wish to limit the assignment of the Declarant Rights to only those persons or entities that qualify under the Declaration.

III.

CONCLUSION

The Defendant has failed to establish that there is a question of fact related to whether it qualifies as a Successor Declarant under Section 27.7. The Defendant did not purchase the Club Property in a "bulk purchase." It is clear and undisputed that the Defendant purchased the Club Property for the purpose of development and sale of club memberships. Though the Defendant may have an alternative plan if the primary purpose of purchasing the Club Property

REPLY TO OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OF DEFENDANT: 9

The Plaintiffs' Motion for Summary Judgment must be granted. The Defendant's Motion for Summary Judgment must be denied.

LUKINS & ANNIS, P.S.

PETER J. SMITH IV
ISB #6997

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CERTIFICATE OF SERVICE

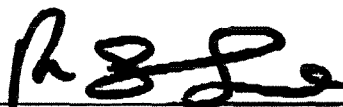
I HEREBY CERTIFY that on the 10th day of November, 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

John F. Magnuson
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
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Honorable John T. Mitchell
Kootenai County Courthouse
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Coeur d'Alene, Idaho 83814

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PETER J. SMITH IV

REPLY TO OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OF DEFENDANT: 11

FILED 12-13-11

AT 5:00 O'Clock P. M

CLERK OF DISTRICT COURT

Jenne Clausen
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, ET AL,)

Plaintiffs,)

vs.)

THE GOLF CLUB AT BLACK ROCK, LLC,)

Defendant.)

Case No. **CV 2011 2786**

**MEMORANDUM DECISION AND
ORDER ON SKY CANYON'S
MOTION TO STRIKE, AND ON
CROSS-MOTIONS FOR SUMMARY
JUDGMENT**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on the parties' cross-motions for summary judgment on the issue of whether defendant The Golf Club at Black Rock, LLC (Golf Club) is a proper successor "declarant" pursuant to the Assignment of Declarant Rights clause of the July 31, 2001, "Black Rock, Covenants, Conditions and Restrictions" (CCRs). Black Rock Development, Inc. (BRD) was the original developer of the Black Rock Development. Complaint, p. 2, ¶ 7. Plaintiffs (hereinafter Sky Canyon, collectively) are seven individual members of the Black Rock Homeowners Association (HOA) and each hold fee simple title to at least one lot in Black Rock. *Id.*, ¶¶ 1-2. The CCRs provided for formation of the HOA. *Id.*, at ¶ 9. The CCRs provide BRD is the "Declarant" and therefore "retained the exclusive power to appoint, remove, and replace Directors and officers" of the HOA until expiration of the "Period of Declarant Control." *Id.*, p. 3, ¶¶ 13-14. The period of Declarant Control began July 31, 2001, and ended

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the earlier of: (a) July 31, 2021 (twenty years from recordation of the CCRs) or (b) the date on which the Declarant has recorded the plats of all Expansion Property and sold 90% of the Lots to Owners other than Declarant or Builder in each of the Plats. *Id.*, at ¶ 15. There is no dispute that the parties are still in the “Period of Declarant Control.

On August 11, 2010, BRD assigned its declarant’s rights to Washington Trust Bank (WTB) in conjunction with its property being foreclosed upon, including the golf course, club house and other club amenities. *Id.*, at ¶¶ 19-20. On August 23, 2010, WTB assigned the Declarant Rights to West Sprague Avenue Holdings, LLC. *Id.*, p. 4, ¶ 22. On October 29, 2010, West Sprague Avenue Holdings, LLC assigned the Declarant Rights to Golf Club in conjunction with conveyance of the club property to Golf Club. *Id.*, at ¶¶ 23- 24. On November 5, 2010, BRD assigned to Golf Club, via a “Conditional Assignment of Declarant Rights” any declarant rights it may have retained following its August 11, 2010, assignment to WTB. *Id.*, at ¶ 25.

On April 1, 2011, Sky Canyon filed its Complaint, seeking declaratory relief that “Defendant does not qualify as a Successor Declarant under the Declaration or alternatively, the period of declarant control has expired and Defendant shall not exercise the rights of the Declarant as provided in the Declaration.” Complaint, p. 6, ¶ 41(1). Sky Canyon also seeks attorney’s fees under I.C. § 12-121. *Id.*, p. 6, ¶ 2. Golf Club filed its Answer and Counterclaim on May 5, 2011, seeking “entry of declaratory relief adjudging and decreeing that it is the duly-qualified Successor to the Declarant Rights of BRD under the Declaration, it is entitled to all rights and benefits as Successor Declarant.” Answer and Counterclaim, p. 9, ¶ 19. Golf Club also seeks an award of attorney’s fees pursuant to I.C. § 12-120(3). *Id.*, at ¶ 21.

On October 19, 2011, Sky Canyon filed its motion for summary judgment on its claim for relief and seeking dismissal of Golf Club's counterclaim. Plaintiff's Motion for Summary Judgment, p. 2. Sky Canyon argues Section 27.7 of the CCRs only allows assignment of the Declarant's Rights where any successor "...takes title to all or a part of the Property, in a bulk purchase for the purpose of development and sale." Plaintiff's Memorandum in Support of Motion for Summary Judgment, p. 8. It is Sky Canyon's contention that, although it concedes Golf Club took title to part of the "Property", there was no "bulk purchase" and the Golf Club did not purchase the portion of the property for the purpose of development and sale. *Id.*, pp. 9, *et seq.*

Also on October 19, 2011, Golf Club filed its cross-motion for summary judgment, requesting its counterclaim for declaratory relief be granted and Sky Canyon's claim for declaratory relief be denied. Motion for Summary Judgment, p. 2. Golf Club argues, *inter alia*, the Period of Declarant Control, defined in Article 2.43 of the CCR, remains in effect and retains the right to develop and sell potential expansion property; "a primary purpose of annexing Expansion Property in conformance with the terms of the CC&Rs would be to develop and sell the same." Memorandum in Support of Motion for Summary Judgment by Defendant/Counterclaim Plaintiff the Golf Club at Black Rock, LLC, p. 15.

On November 4, 2011, Sky Canyon filed its Motion to Strike, asking that the Court strike extensive portions of the Affidavits of Roger Rummel and John Magnuson, both filed in support of Golf Club's cross motion for summary judgment. In response, Golf Club filed its Memorandum in Opposition to Plaintiff's Motion to Strike on November 10, 2011.

Oral argument was held on November 16, 2011; at the conclusion of which, this Court took the motion to strike and the cross-motions for summary judgment under 0754

dvisement. These motions are at issue, and the case is currently scheduled for a two-day court trial beginning February 27, 2012.

II. STANDARD OF REVIEW.

In considering a motion for summary judgment, the Court is mindful that summary judgment may properly be granted only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). In determining whether any issue of material fact exists, this court must construe all facts and inferences contained in the pleadings, depositions, and admissions, together with the affidavits, if any, in the light most favorable to the non-moving party. I.R.C.P. 56(c); *Sewell v. Neilson, Monroe Inc.*, 109 Idaho 192, 194, 706 P.2d 81, 83 (Ct. App. 1985). A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue for purposes of summary judgment. *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134, Idaho 84, 87, 996 P.2d 303, 306 (2002). Summary judgment must be denied if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence. *Smith v. Meridian Joint School District No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996). Where, as here, both parties file motions for summary judgment relying on the same facts, issues and theories, the judge, as trier of fact, may resolve conflicting inferences if the record reasonably supports the inferences. *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 518-20, 650 P.2d 657, 661-62 (1982). Where both parties have moved for summary judgment on the same evidentiary facts and on the same theories and issues, the parties have effectively stipulated that there is no genuine issue of material fact, and the judge is entitled to draw all reasonable inferences from the facts presented. *Dunham v. Hackney Airpark, Inc.*, 133 Idaho 613, 990 P.2d 1224 (Ct.App. 1999). "Moreover, when the evidentiary

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facts are not disputed and the judge rather than the jury will be the ultimate trier of fact...the judge may draw the inferences he or she deems most probable since the judge alone would be responsible for drawing such inferences from the same facts at trial." *Id.* Because this case will involve a court trial, the court in this case is entitled to draw all reasonable inferences from the facts presented. *Id.*

Evidentiary rulings, such as ones on the motion to strike before the Court, are reviewed under an abuse of discretion standard. *Perry v. Magic Valley Reg'l. Med. Ctr.*, 134 Idaho 46, 50, 995 P.2d 816, 820 (2000).

III. ANALYSIS.

A. Plaintiff's Motion to Strike.

Sky Canyon filed its motion to strike extensive portions of the Affidavit of Roger Rummel and John F. Magnuson on November 4, 2011. On November 10, 2011, Golf Club filed its Memorandum in Opposition to Plaintiffs' Motion to Strike. Reviewing Courts apply the abuse of discretion standard when evaluating whether testimony offered in connection with a motion for summary judgment is admissible. *Gem State Ins. Co. v. Hutchison*, 145 Idaho 10, 15, 175 P.3d 72, 177 (2007) (citing *McDaniel v. Inland Northwest Renal Care Group-Idaho, LLC*, 144 Idaho 219, 221, 159 P.3d 856, 858 (2007)). In Idaho, a party may wait until hearing on a summary judgment motion to object to an opposing party's affidavits. *Hecla Mining Co. v. Star-Morning Mining Co.*, 122 Idaho 778, 782-83, 839 P.2d 1192, 1196-97 (1992). In *Shane v. Blair*, 139 Idaho 126, 75 P.3d 180 (2003), the Idaho Supreme Court wrote:

We have held that the question of admissibility of affidavits under Idaho Rule of Civil Procedure 56(e) is a threshold question to be analyzed before applying the liberal construction and reasonable inferences rules required when reviewing motions for summary judgment. *Rhodehouse v. Stutts*, 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994). The trial court must look at the affidavit or deposition testimony and determine whether it

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alleges facts, which if taken as true, would render the testimony admissible. *Dulaney v. St. Alphonsus Regional Med. Ctr.*, 137 Idaho 160, 163, 45 P.3d 816, 819 (2009). When reviewing the trial court's evidentiary rulings, this Court applies an abuse of discretion standard. *Sulaney*, 137 Idaho at 163-64, 45 P.3d at 819-20.

139 Idaho 126, 128, 75 P.3d 180, 182. Idaho Rule of Civil Procedure 56(e) requires affidavits be made upon personal knowledge, "shall set forth such facts as would be admissible in evidence", and affirmatively show the affiant is competent to testify to the matters stated. I.R.C.P. 56(e).

With respect to the Affidavit of Roger Rummel, Sky Canyon takes issue with 40 statements, making five hearsay objections and arguing the remaining objected-to portions call for a legal conclusion and/or lack foundation. In response, Golf Club notes Roger Rummel was the Golf Club's Rule 30(b)(6) designee (and therefore has personal knowledge of the transactions at issue); and Golf Club addressed each objection in turn, and thoroughly disputing each as inappropriate, in large part because the statements made are meant to provide context for the CCRs and other documents (an assignment, a Deed, etc.) submitted without objection. Memorandum in Opposition to Plaintiffs' Motion to Strike, p. 3, *et seq.* Interestingly, Sky Canyon objects to several statements about Assignments and Deeds being attached to the Affidavit of Mr. Magnuson as lacking foundation, but does not object to the substantive Exhibits themselves attached. Motion to Strike, pp. 3-4. To these objections, Golf Club states the actual Deeds and Assignments were submitted to the Court without objection and that the affiant "is familiar with what he has submitted in support of his request for relief from the Court." Memorandum in Opposition to Plaintiffs' Motion to Strike, pp. 9, *et seq.* In *Sprinkler Irrigation Co., Inc. v. John Deere Ins. Co., Inc.*, 139 Idaho 691, 85 P.3d 667 (2004), the Idaho Supreme Court affirmed the District Court's striking of Sprinkler's

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expert's Affidavit, determining the entire Affidavit "is filled with rambling, nonspecific, inaccurate and unsupported statements." 138 Idaho 691, 697, 85 P.3d 667, 673. In the present case, it is the motion to strike which itself sets forth inaccurate and unsupported arguments. Golf Club concedes that the objection to ¶ 22, in which Mr. Rummel refers to Golf Club as the "successor declarant" is the only objection raising an "arguable" point. Memorandum in Opposition to Plaintiffs' Motion to Strike, p. 15; see Motion to Strike, p. 5. Given the parties' cross summary judgment motions on this very issue, and only this issue, Mr. Rummel's reference to Golf Club as the "successor declarant" certainly improperly calls for a legal conclusion and must be stricken. To that extent only, Sky Canyon's Motion to Strike is granted.

Sky Canyon's other objections to the Affidavit of John F. Magnuson take issue with language describing the various assignments from BRD to WTB, from WTB to Sprague Avenue Holdings, and ultimately from Sprague Avenue Holdings to Golf Club. Motion to Strike, pp. 5-6. Again, Golf Club is correct in arguing against this Court's striking of the statements because each assignment described was properly executed and delivered; "[t]he legal force and effect of those assignments is for this Court to determine. However, the Assignment, as a matter of fact, were executed and delivered by and between the parties so stated." Memorandum in Opposition to Plaintiffs' Motion to Strike, p. 16. In all other aspects, Sky Canyon's Motion to Strike is denied.

B. Cross-Motions for Summary Judgment.

In its memorandum in support of its motion for summary judgment, Sky Canyon presents the issue before the Court as being whether Golf Club qualifies as a "successor declarant" to whom the Declarant's rights could have been assigned pursuant to Section 27.7 of the CCRs. Plaintiffs' Memorandum in Support of Motion for Summary Judgment, p. 5. Sky Canyon quotes Section 27.7 in its entirety:

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27.7 Assignment. Declarant may assign all or any part of the Special Declarant Rights or any of Declarant's other rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor will be identified, the particular rights being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Recorder of Kootenai County, Idaho. (Emphasis Added).

Id., p. 8; see also Exhibit 2 to the Plaintiffs' Submission of Certified Documents in Support of Their Motion for Summary Judgment. (underlining added). Sky Canyon concedes that "there is no question that Defendant took title to part of the Property." Plaintiff's Memorandum in Support of Motion for Summary Judgment, p. 9. However, Sky Canyon argues there was no "bulk purchase" as that phrase is defined with either by BLACK'S LAW DICTIONARY or the Merriam-Webster website. *Id.*, p. 10. Sky Canyon notes the Plat of Black Rock created a number of blocks reserved for future residential lots, but these individual lots were not platted at the time the Black Rock Plat was recorded. *Id.*, p. 11. Sky Canyon then argues it follows there can have been no undivided, bulk purchase based on the platting activity because there was no "purchase of part of the Property reserved for future residential use under the original Plat." *Id.*, p. 12. Sky Canyon goes on to argue the purchase of Golf Club's sale was not for development and sale as contemplated by the CCRs, but rather for development and sale of golf club memberships. *Id.*, p. 15. "...[A]n intent to develop and sell the property contingent on future events (such as a plan to develop and sell the applicable property if the golf club is not profitable) does not meet the requirements of Section 27.7. *Id.* Ultimately, Sky Canyon argues, Golf Club fails to meet the definition of a "successor declarant", found in Section 2.50 (defining "Successor Declarant" as any party or entity to whom a Declarant assigns any or all of its rights, obligations or interest

as Declarant “as permitted by Section 27.7., evidenced by recordation of an assignment or deed of record) of the CCRs because it did not take title to part of the property “in a bulk purchase for the purpose of development and sale.” *Id.*, pp. 16-17.

In its memorandum in support of its cross motion for summary judgment, Golf Club makes several arguments: (1) the period of Declarant Control remains in effect such that “expansion property” can still be acquired; (2) Golf Club acquired part of the “Property” in bulk via its purchase of approximately 206 acres, the Clubhouse, all related equipment, fixtures, inventories, etc. for the discounted bulk sale price of \$6 million; (3) and at the time the Golf Club made the purchase, there were no existing memberships in or to the Club property, therefore, the intent to sell membership to “create a vibrant and collegial golf course and recreational community atmosphere”, while retaining the right to develop and/or sell the property, satisfies Section 27.2. Memorandum in Support of Motion for Summary Judgment by Defendant/Counterclaim Plaintiff The Golf Club at Black Rock, LLC, pp. 9, *et seq.*

In their responsive briefing, the parties have further clarified their arguments for the Court. In the Golf Club’s November 3, 2011, Memorandum in Opposition to Motion for Summary Judgment, Golf Club argues the period of Declarant control remains in effect, the CCRs’ definition of “property” includes both the Club Property purchased by Golf Club (the golf course, practice facilities, clubhouse, etc.) and possible future “expansion property”, the sale of the property was in bulk as it included within the 206 acre purchase the Clubhouse, all associated equipment, and fixtures etc. for the “bulk price of \$6 million”, where the property (including the Beach Club purchased for \$1.5 million) was assessed by the County shortly after purchase at over \$14 million, and Golf Club’s sale of 172 golf memberships alone satisfies Section 27.7’s requirement that the bulk purchase be for “development and sale.” Memorandum in Opposition to Motion for

Summary Judgment of Plaintiffs/Counterclaim Defendants, pp. 3, *et seq.* Golf Club continues that even if the Court disagrees that selling of golf membership constitutes “development and sale” under the CCRs, it:

has the ability to develop and sell portions of the 206 +/- acre parcel that included, for any residential or other purpose not proscribed by the CC&Rs. This can be as an alternative to the operation as a golf club or in tandem with the same.

Id., p. 10. Finally, Golf Club argues its acquisition of the right to purchase potential “expansion property” in and of itself satisfies Section 27.7 as such “expansion property” constitutes “property” for the purposes of the CCRs, the rights to “expansion property” were acquired in bulk, and “the only purpose for acquiring ‘Expansion Property’ would be for development and sale.” *Id.*, pp. 11-12. In their objection to Golf Club’s motion for summary judgment, Sky Canyon again defines the term “bulk”, arguing “a ‘bulk purchase’ is a purchase of a part of the Property reserved for future residential use under the original Plat.” Plaintiff’s Objection to Defendant’s Motion for Summary Judgment, p. 7. Because the CCRs do not include personal property in the definition of “Property”, Sky Canyon posits that Golf Club’s “purchase of personal property is irrelevant” in response to Golf Club’s argument that it effected a bulk purchase via purchase of the 206 acres including the Clubhouse, associated equipment, fixtures, inventories, etc. *Id.*; see Memorandum in Opposition to Motion for Summary Judgment of Plaintiffs/Counterclaim Defendants, p. 7. And, Sky Canyon again vehemently argues Golf Club did not purchase the property “for the purpose of development and sale.” Plaintiff’s Objection to Defendant’s Motion for Summary Judgment, pp. 7, *et seq.* Essentially, Sky Canyon’s contention is Golf Club “purchased the Club Property for the purpose of owning and operating a golf club”, which Sky Canyon differentiates from the CCRs requirement of developing and selling property. *Id.*, pp. 8, *et seq.*

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Two questions remain for this Court under Section 27.7: (1) whether the instant purchase of property qualifies as a “bulk purchase”, and (2) whether the intent to develop and sell golf club memberships can be treated as “development and sale” of Club Property.

As argued by the parties, Idaho recognizes covenants restricting the free use of land as valid and enforceable,

[h]owever, since restrictive covenants are in derogation of the common law right to use land for all lawful purposes, the Court will not extend by implication any restriction not clearly expressed. Further, all doubts are to be resolved in favor of the free use of land.

Berezowski v. Schuman, 141 Idaho 532, 535, 112 P.3d 820, 823 (2005). Courts apply the general rules of contract construction to covenants. *Pinehaven Planning Bd. v. Brooks*, 138 Idaho 826, 829, 70 P.3d 664, 667 (2003). A covenant is ambiguous if capable of more than one reasonable interpretation; if a covenant is unambiguous, the court must apply its plain meaning as a matter of law. *Id.*, 138 Idaho 826, 829, 70 P.3d 664, 667. If a covenant is ambiguous, its interpretation is a matter of fact. *Intermountain Eye and Laser Centers, PLLC v. Miller*, 142 Idaho 218, 221, 127 P.3d 121, 125 (2005). Ambiguity is not established simply because a party presents differing interpretations to the court. *Rim View Trout Co. v. Higginson*, 121 Idaho 819, 823, 828 P.2d 848, 852 (1992). If the Agreement is ambiguous, this Court must view the Agreement as a whole to determine the intent of the parties at the time of contracting. *See Best Hill Coalition v. Halko, LLC*, 144 Idaho 813, 817, 172 P.3d 1088, 1092 (2007).

All of these tenets run contrary to Sky Canyon's position. Sky Canyon is advocating that this Court by implication extend this express language in the restrictive covenant (making it more restrictive), when the express language does not allow such additional restriction. This Court is prohibited from doing such. This Court is

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constrained only to give reasonable interpretation to the contract language, and Sky Canyon's interpretation is not reasonable. Because Sky Canyon's interpretation is not reasonable, it cannot be used to create ambiguity. Even if Sky Canyon's interpretation was reasonable, Sky Canyon is advocating an interpretation of Section 27.7 which is not supported by the agreement as a whole.

The terms "bulk" and "bulk purchase" have been defined by the parties, and, indeed, little disagreement exists regarding how the terms have been defined in dictionaries. The plain language of the CCR at issue reads:

27.7 Assignment. Declarant may assign all or any part of the Special Declarant Rights or any of Declarant's other rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor will be identified, the particular rights being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Recorder of Kootenai County, Idaho.

Exhibit 2 to Plaintiff's Submission of Certified Documents in Support of Their Motion for Summary Judgment, at p. 63. The terms "bulk purchase", "development" and "sale" are not defined in Article 2 (Definitions) of the CCRs. This Court is constrained to give the CCR language its ordinary, plain meaning if found unambiguous and not capable of more than one reasonable interpretation. *Pinehaven Planning Bd.*, 138 Idaho 826, 829, 70 P.3d 664, 667. This Court could find no Idaho or foreign jurisdiction case law explicitly defining the term "bulk purchase." For purposes of criminal law, "bulk amount" has been defined in state statutes, but such definition is inapplicable here. See e.g. Baldwin's Ohio Revised Code § 2925.01(D). As noted by the parties, BLACK'S LAW DICTIONARY provides the following definitions:

bulk, *adj.* (of goods) not divided into parts <a bulk shipment of grain>

bulk discount. See *volume discount* under DISCOUNT

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bulk sale. A sale of a large quantity of inventory outside the ordinary course of the seller's business * Bulk sales are regulated by Article 6 of the UCC, which is designed to prevent sellers from defrauding unsecured creditors by making these sales and then dissipating the sale proceeds- Also termed *bulk transfer*.

BLACK'S LAW DICTIONARY 190 (7th ed. 1999). It is Sky Canyon's contention that under its plain meaning:

...bulk means a purchase of a large quantity that is later divided into smaller quantities and sold. The Defendant [Golf Club] did not purchase a large quantity of land with the purpose of dividing and selling the real property. The Club Property was purchased to be used as a finished unit, not divided up into parts and sold.

Reply to Opposition to Motion for Summary Judgment of Defendant, p. 6. It is Golf Club's contention that no requirement existed in the CCRs:

...that the 'Club Property' be maintained in a static condition as it presently exists. Of the 206+/- acres, portions can be developed at the election of The Golf Club for purposes or development and sale.

Memorandum in Opposition to Motion for Summary Judgment of Plaintiffs/Counterclaim Defendants, p. 8.

Thus, the parties have differing interpretations of whether the phrase "for the purpose of development and sale" in Section 27.7 of the CCRs means development and sale of real property (as set forth by Sky Canyon), or development and sale of golf memberships with the possibility of future development and sale of expansion property (as argued by Golf Club). This Court finds Sky Canyon's interpretation not to be reasonable for several reasons. First, such an interpretation is not justified by the language itself. Section 27.7 is not limited by its terms to only "real" property. Second, such an interpretation requires this Court to imply more restrictive terms than are used in this section of the restrictive covenant, a task this Court is not allowed to perform.

Third, as pointed out by counsel for Golf Club at oral argument, because The Club at Black Rock had terminated all golf memberships (Affidavit of Roger Rummel in support of 764

of Defendant's Motion for Summary Judgment, p. 5, ¶ 14), Golf Club was purchasing from the bank a property with no memberships. And as Rummel stated in his affidavit, Golf Club hoped to then sell memberships (*Id.*, pp. 5-6, ¶ 19), but if that didn't work out, Golf Club intended to and had the right to sell the golf course property. *Id.* Golf Club purchased this property for the "purpose of development and sale" of golf memberships, and, alternatively, sale of the golf course property. Both are allowed under Section 27.7. As mentioned above, ambiguity is not established simply because a party presents differing interpretations to the court. *Rim View Trout Co. v. Higginson*, 121 Idaho 819, 823, 828 P.2d 848, 852 (1992). The Court finds Sky Canyon's interpretation to not be reasonable. Thus, there is no ambiguity.

If this Court found Sky Canyon's interpretation (that the phrase "for the purpose of development and sale" in Section 27.7 of the CCRs means development and sale of real property only) to be reasonable, then the CCRs would be ambiguous as a matter of law, requiring the Court to read the CCRs as a whole and determine the intent of the parties. While the Court does not find Sky Canyon's interpretation to be reasonable, the following analysis is provided by the Court as an additional or alternative ground for granting summary judgment in favor of Golf Club.

The CCRs Introduction states, in relevant part:

This Declaration is intended to regulate the [Black Rock] Project and use of the Black Rock Planned Unit Development for the mutual benefit of future Owners and occupants. The Project is to be an aesthetically pleasing family oriented residential development.

Exhibit 2 to Plaintiff's Submission of Certified Documents in Support of Their Motion for Summary Judgment, at p. 1. The Club Property is specifically addressed in Article 17, which reads:

17.1 Club Property. The golf course planned by Declarant will be privately owned and operated by the Club and is not part of the Common Area

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hereunder. Nothing in this Declaration nor any designation or reference on any Plat, Final Development Plan, Black Rock Document, planned unit development document, approval document issued by any government entity, drawing, advertisement, brochure, or any other document in any way relating to Community or any oral representation of any agent of the Declarant or any party related to the Declarant shall give rise to any right, whether expressed or implied, of an Owner to play golf, or have access to the Club Property, become a member of the Club, require the Declarant to construct or maintain an area as a Club Property, or otherwise impose any obligation of the Declarant relating in any way to the proposed Club Property. All arrangements relating to any Owner and the planned Club Property must be in writing signed by the Owner and the planned Club Property and shall be separate and apart from the Black Rock Documents. The Club has the exclusive right to determine from time-to-time, in its sole discretion and without notice or approval of any change, how and by whom the Club Property shall be used. By way of example, but not limitation, the Club has the right to approve users and determine eligibility for use, to reserve use rights for future purchasers of Lots, to terminate any or all use rights, to change, eliminate or cease operation of any or all of the Club Property or the operation thereof to anyone and on any terms which it deems appropriate, to limit the availability of use privileges, and to require the payment of a purchase price, initiation fee, membership deposit, dues, and other charges for the use privileges.

OWNERSHIP OF A LOT OR ANY PORTION OF THE PROPERTY DOES NOT GIVE ANY VESTED RIGHT OR EASEMENT, PRESCRIPTIVE OR OTHERWISE, TO USE THE CLUB PROPERTY, OR TO ACQUIRE A MEMBERSHIP IN THE CLUB AND DOES NOT GRANT ANY OWNERSHIP OR MEMBERSHIP INTEREST IN THE CLUB OR THE CLUB PROPERTY.

Exhibit 2 to Plaintiff's Submission of Certified Documents in Support of Their Motion for Summary Judgment, at p. 50. (emphasis in original). Given the breadth of Section 17.1, and its explicit separation from the general introductory purpose of Black Rock being a residential development, the question of whether the Club Property was purchased for the purpose of development and sale has been answered. There is simply no requirement in the CCRs that the Club Property be developed for sale of real property (as opposed to development and sale of golf club memberships), and to read such a requirement into the CCRs would be an inappropriate act on the part of this Court. See *e.g. Bondy v. Levy*, 121 Idaho 993, 997, 829 P.2d 1342, 1346 (1992) (Court may not revise a contract to create a better agreement for one of the parties).

In fact, Section 17.1 provides the Club Property owner with the sole ability to determine how the property is to be used, including ceasing use of the property as a golf club at any time. But even if this Court were to find that “development and sale” inferred development and sale of real property only, Golf Club purchased this property to later sell it if the sale of memberships did not pan out. Affidavit of Roger Rummel in support of Defendant’s Motion for Summary Judgment, p. 5, 6, ¶ 14, ¶ 19.

Thus, the only remaining question is whether the Golf Club’s purchase of the Club Property was a “bulk purchase.” Again, the parties do not argue about the definition of the term, but rather about its application to the facts before the Court. Golf Club argues: “Every property right that currently exists, or that could exist in the future (through Expansion Property), was purchased in one lump and bulk transaction at a bulk discount of fifty percent (50%) off of the assessed valuation.” Memorandum in Opposition to Motion for Summary Judgment of Plaintiffs/Counterclaim Defendants, p. 9. On the other hand, Sky Canyon notes the purchase of the Club Property was of Tract A (holes 1-9 and 16-18 of the golf course), Tract C and a portion of Lot 1, Block 11 of the Plat (holes 10-15 of the golf course), Lot 1, Block 8 of the Fifth Addition (the Club House), A portion of Tract C (a short portion of Kimberlite Drive), the West 150 feet of the North half of the Southwest Quarter of the Southeast Quarter and Government Lot 10 (part of one hole of the golf course), and Lot 1, Block 15 of the Plat (the waterfront property), and argues that a “‘bulk purchase’ is a purchase of a part of the Property reserved for future residential use under the original Plat.” Plaintiff’s Objection to Defendant’s Motion for Summary Judgment, pp. 5-7. The fact the Golf Club argues it received a “bulk discount” in its purchase of the Club Property and the Beach Club for 50% less than appraisal value is not determinative. Rather, the CCRs define Club Property as:

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...all of the real property owned by the Club and its successors or assigns plus all of the recreational and social facilities and maintenance facilities constructed thereon, which will be operated by the Club or its successor or assigns and commonly known as the Club at Black Rock, including without limitation, the golf course, the golf clubhouse, golf practice facilities, tennis courts, swimming pool, private beach, and any other recreational facilities offered by the Club...

Exhibit 2 to Plaintiff's Submission of Certified Documents in Support of Their Motion for Summary Judgment, at p. 3. Here, it is evident that Golf Club purchased an undivided portion of real property, known as the Club Property, which included but was not limited to the golf course, golf clubhouse, golf practice facilities, golf maintenance facilities, tennis courts, swimming pool, private beach, etc. Had Golf Club purchased but one or two of the properties listed immediately *supra*, Sky Canyon's argument would make more sense. However, given the fact that the Club Property's was deemed real property separate and apart, and involving different rights and limitations, from the Black Rock development as a whole, it would not be appropriate for this Court to only consider Golf Club's purchase a "bulk purchase" if it were in conjunction with additional property bought for future residential development, given the facts of this case and viewing the contract in its entirety.

IV. CONCLUSION AND ORDER.

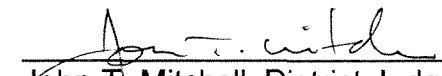
For the reasons stated above, this Court denies Sky Canyon's motion to strike, with the exception of the objection to the first portion of ¶ 22 of the Rummel Affidavit. This Court finds the CCR language not ambiguous as the interpretation posited by Sky Canyon is not reasonable; additionally, if such interpretation were reasonable, the CCR language at issue would be ambiguous as a matter of law, and the ambiguity is resolved in favor of Golf Club and against Sky Canyon. Accordingly, Sky Canyon's motion for summary judgment is denied and Golf Club's motion for summary judgment is granted.

IT IS HEREBY ORDERED Sky Canyon's Motion to Strike as pertains to the objection to the first portion of ¶ 22 of the Rummel Affidavit is GRANTED, and that objection is sustained. All other aspects of Sky Canyon's Motion to Strike are DENIED, and all other objections are overruled.

IT IS FURTHER ORDERED Sky Canyon's Motion for Summary Judgment is DENIED, and Golf Club's Motion for Summary Judgment is GRANTED.

IT IS FURTHER ORDERED the court trial beginning February 27, 2012, is VACATED.

Entered this 13th day of December, 2011.


John T. Mitchell, District Judge

Certificate of Service

I certify that on the 13 day of December, 2011, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer
Peter J. Smith

Fax #
664-4125 ✓

Lawyer
John F. Magnuson

Fax #
667-0500 ✓

#1829 
Jeanne Clausen, Deputy Clerk

0769

JOHN F. MAGNUSON
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, ID 83814
Phone: (208) 667-0100
Fax: (208) 667-0500
ISB #04270

Attorney for Defendant/Counterclaimant

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED:

2011 DEC 22 PM 2:46

CLERK DISTRICT COURT

Patty Kuylen
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company;
ROBERT C. SAMUEL; a married man;
JOE K. DONALD AND LISBETH
LILLEMOR DONALD, husband and
wife; WAYNE A. GIANOTTI AND
CAROLYN M. GIANOTTI, Trustees of
the Gianotti Revocable Trust U-A dated
January 29, 1991; RUSSELL M. WICKS
AND EVELYN L. WICKS, husband and
wife; BUDDY C. STANLEY AND
JUDITH L. STANLEY, Trustees of the
Stanley Family Trust dated February 26,
2004; CRAIG R. FALLON AND M.
ELLEN FALLON, husband and wife,

Plaintiffs/Counter-
Defendants,

vs.

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Defendant/Counterclaimant.

CASE NO. CV-11-2786

**DEFENDANT'S MEMORANDUM
OF COSTS AND ATTORNEY FEES**

PURSUANT TO IRCP 54(d) and 54(e), as well as Article 24.8 of the "Declaration of Covenants, Conditions, and Restrictions of Black Rock a Planned Unit Development" and Idaho Code § 12-120(3), Defendant The Golf Club at Black Rock, LLC hereby submits and files the following Memorandum of Costs and Fees in the above-captioned matter:

COSTS AS A MATTER OF RIGHT PURSUANT TO IRCP 54(d)(1)(C):

(1) Court Filing Fees:

Appearance fee: \$ 58.00

(2) Charge for one (1) copy of any deposition taken
by any of the parties to the action in preparation
for trial of the action (the deposition of Roger
Rummel) (Rule 30(b)(6)): \$ 159.85

**TOTAL COSTS AS A MATTER OF RIGHT PURSUANT
TO IRCP 54(d)(1)(C):** **\$ 217.85**

ATTORNEY FEES

John F. Magnuson - 68 hours at \$250.00 per hour: **\$17,000.00**

RECAPITULATION:

Costs as of Right: \$ 217.85
Attorney Fees: \$17,000.00

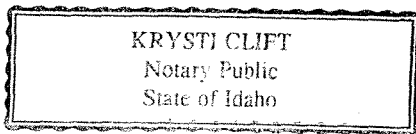
TOTAL COSTS AND FEES: \$17,217.85

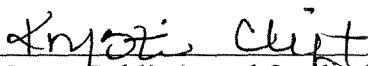
The foregoing statement of costs and fees actually incurred by Defendant in this action is correct and in compliance with Idaho Rules of Civil Procedure 54(d) and 54(e). The foregoing statement of fees is supported by the Affidavit of John F. Magnuson filed herewith pursuant to IRCP 54(e)(5).

DATED this 22nd day of December, 2011.


JOHN F. MAGNUSON

SUBSCRIBED AND SWORN to before me this 22nd day of December, 2011.




Notary Public in and for the State of Idaho
Residing at: Coeur d'Alene
My commission expires: 11/13/14

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December, 2011, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Peter J. Smith
Lukins & Annis, P.S.
601 E. Front Avenue, Ste. 502
Coeur d'Alene, ID 83814-5155
Email: pjs@lukins.com

 X U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 FACSIMILE
(208) 664-4125



BR-GOLF CLUB-SKY CANYON-FEES.BRF.wpd

JOHN F. MAGNUSON
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, ID 83814
Phone: (208) 667-0100
Fax: (208) 667-0500
ISB #04270

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2011 DEC 22 PM 2:46

CLERK DISTRICT COURT

Larry Bayley
DEPUTY

Attorney for Defendant/Counterclaimant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company;
ROBERT C. SAMUEL; a married man;
JOE K. DONALD AND LISBETH
LILLEMOR DONALD, husband and
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CAROLYN M. GIANOTTI, Trustees of
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January 29, 1991; RUSSELL M. WICKS
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ELLEN FALLON, husband and wife,

Plaintiffs/Counter-
Defendants,

vs.

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Defendant/Counterclaimant.

CASE NO. CV-11-2786

**AFFIDAVIT OF JOHN F.
MAGNUSON IN SUPPORT OF
DEFENDANT'S MEMORANDUM
OF COSTS AND ATTORNEY FEES**

AFFIDAVIT OF JOHN F. MAGNUSON
IN SUPPORT OF DEFENDANT'S MEMORANDUM
OF COSTS AND ATTORNEY FEES - PAGE 1

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STATE OF IDAHO)
) ss.
COUNTY OF KOOTENAI)

JOHN F. MAGNUSON, being first duly sworn upon oath, deposes and says:

1. I am the attorney of record for Defendant/Counterclaimant The Golf Club at Black Rock, LLC. I have personal knowledge of the matters set forth herein and am otherwise competent to testify thereto.

2. I undertook the representation of Defendant in this matter in April of 2011. My hourly rate in effect at that time for work of this nature was \$250.00. On December 13, 2011, the Court granted the Defendant's Motion for Summary Judgment and entered its order consistent therewith.

3. Article 24.8 of the "Declaration of Covenants, Conditions and Restrictions of Black Rock a Planned Unit Development," recorded as Kootenai County Instrument No. 1689309, provides:

Recovery of Costs. If legal assistance is obtained to enforce any of the provisions of the Black Rock Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Black Rock Documents or the restraint of violations of the Black Rock Documents, the prevailing party will be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees and legal assistants' fees as may be incurred, or if suit is brought, as may be determined by the court.

See Affidavit of John F. Magnuson (filed October 19, 2011) at Exhibit A, p. 59.

4. Between April 14, 2011 and November 30, 2011, I expended 64.2 hours in this proceeding on behalf of the Defendant. Attached hereto as Exhibit A, and incorporated by this reference, is an itemization of the specific time expended on the Defendant's behalf in this

proceeding. Between December 1, 2011 through the date of the completion of this Affidavit and accompanying Memorandum of Costs, I expended an additional 3.8 hours on behalf of the Defendant. These hours will be billed at the same hourly rate (\$250.00).

5. I believe in good faith, and therefore state, that the amount of fees claimed in "Defendant's Memorandum of Costs and Attorney Fees," and as itemized on Exhibit A hereto as described herein, are reasonable given the factors set forth in IRCP 54(e)(3). A discussion of those factors in relation to the claim at issue follows:

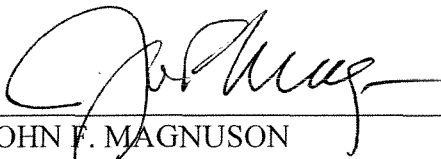
- (A) The time and labor required: See Exhibit A hereto.
- (B) The novelty and difficulty of the question: Reasonable for an experienced attorney.
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law: Reasonable for an experienced attorney.
- (D) The prevailing charges for like work: The fees requested are within the range of fees in this area for an attorney of like expenses.
- (E) Whether the fee is fixed or contingent: Hourly basis.
- (F) Time limitations imposed by client or circumstances of this case: None.
- (G) The amount involved and the results: Plaintiffs sued Defendant claiming improper action by the Defendant under certain recorded covenants. The result was the entry of summary judgment in favor of Defendants, and against Plaintiffs, on the entirety of Plaintiffs' claims.
- (H) Undesirability of case: Not applicable.
- (I) The nature and length of the professional relationship with the client: The undersigned has represented the Defendant for approximately fourteen (14) months.

(J) Awards in similar cases: Inapplicable.

(K) The reasonable cost of automated legal research: Inapplicable.

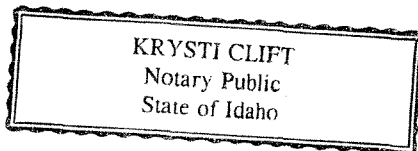
6. Your Affiant further states that the fees claimed herein are reasonable in light of the factors set forth in IRCP 54.

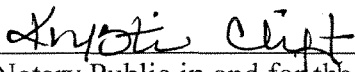
DATED this 22nd day of December, 2011.



JOHN F. MAGNUSON
Attorney for Defendant

SUBSCRIBED AND SWORN to before me this 22nd day of December, 2011.





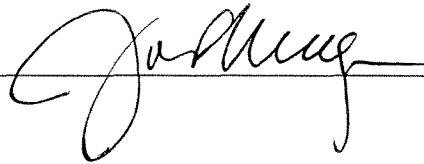
Notary Public in and for the State of Idaho
Residing at: Coeur d'Alene
My commission expires: 11/13/14

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December, 2011, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Peter J. Smith
Lukins & Annis, P.S.
601 E. Front Avenue, Ste. 502
Coeur d'Alene, ID 83814-5155
Email: pjs@lukins.com

 X U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 FACSIMILE
 (208) 664-4125



A handwritten signature in cursive script, appearing to read "John Magnuson", is written over a horizontal line.

BR-GOLF CLUB-SKY CANYON-JFM.AFF3.wpd

JOHN F. MAGNUSON
ATTORNEY AT LAW
P.O. BOX 2350
COEUR D'ALENE, ID 83816

Invoice submitted to:
The Golf Club at Black Rock, LLC
Attn: Mr. Ken Sanman, Controller
18168 S. Kimberlite Drive
Coeur d'Alene, ID 83814

December 19, 2011

In Reference To: Sky Canyon Litigation
Fee Arrangement: \$250 Hour
File No. 08-136.6C-1a

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
4/14/2011 Review complaint, correspondence; letter to/from client, counsel.	0.70 \$250.00/hr	\$175.00
4/15/2011 Letter to/from PS, court, client; draft notice.	0.50 \$250.00/hr	\$125.00
4/20/2011 Draft pleading, correspondence.	0.50 \$250.00/hr	\$125.00
4/21/2011 Draft correspondence, pleadings; research.	0.60 \$250.00/hr	\$150.00
4/22/2011 Letter to/from court, client.	0.20 \$250.00/hr	\$50.00
4/25/2011 Letter from court; prepare answer; review documents.	0.50 \$250.00/hr	\$125.00
4/26/2011 Letter from court.	0.20 \$250.00/hr	\$50.00
5/2/2011 Review Declaration; draft answer, counterclaims, correspondence.	2.10 \$250.00/hr	\$525.00
5/3/2011 Letter to client.	0.30 \$250.00/hr	\$75.00
5/5/2011 Letter to/from counsel; telephone call to/from counsel.	0.80 \$250.00/hr	\$200.00

EXHIBIT A

0778

	<u>Hrs/Rate</u>	<u>Amount</u>
5/6/2011 Letter to/from counsel.	0.20 \$250.00/hr	\$50.00
5/9/2011 Letter to/from counsel.	0.20 \$250.00/hr	\$50.00
5/11/2011 Letter to/from counsel.	0.20 \$250.00/hr	\$50.00
5/16/2011 Letter to/from client, counsel.	0.40 \$250.00/hr	\$100.00
5/18/2011 Letter from court, to PS.	0.30 \$250.00/hr	\$75.00
5/23/2011 Letter to court.	0.20 \$250.00/hr	\$50.00
5/26/2011 Letter from court.	0.20 \$250.00/hr	\$50.00
5/31/2011 Conference with client.	0.20 \$250.00/hr	\$50.00
6/3/2011 Letter from counsel; telephone call to court.	0.40 \$250.00/hr	\$100.00
6/6/2011 Conference with court; letter to client.	0.30 \$250.00/hr	\$75.00
6/28/2011 Letter from court.	0.20 \$250.00/hr	\$50.00
6/29/2011 Letter to/from PS, clients; conference with client.	1.00 \$250.00/hr	\$250.00
6/30/2011 Revise correspondence; letter to PS.	0.40 \$250.00/hr	\$100.00
7/7/2011 Conference with client; work on summary judgment affidavits.	0.60 \$250.00/hr	\$150.00
7/8/2011 Letter re: case issues; draft affidavit; letter from court, to client.	1.10 \$250.00/hr	\$275.00
7/13/2011 Work on summary judgment affidavits, brief.	1.10 \$250.00/hr	\$275.00
7/14/2011 Work on summary judgment brief; miscellaneous correspondence.	2.20 \$250.00/hr	\$550.00

0779

	<u>Hrs/Rate</u>	<u>Amount</u>
7/15/2011 Telephone call to/from counsel, court; letter from counsel, to clients.	0.70 \$250.00/hr	\$175.00
7/18/2011 Letter from PS.	0.20 \$250.00/hr	\$50.00
7/19/2011 Conference with court; letter to/from client, counsel.	0.60 \$250.00/hr	\$150.00
7/20/2011 Letter to/from client, counsel.	0.50 \$250.00/hr	\$125.00
7/21/2011 Letter to/from client, counsel.	0.40 \$250.00/hr	\$100.00
7/27/2011 Letter to/from PS.	0.20 \$250.00/hr	\$50.00
7/28/2011 Letter to client, from PS.	0.30 \$250.00/hr	\$75.00
7/29/2011 Correspondence re: case issues.	0.20 \$250.00/hr	\$50.00
8/2/2011 Letter from court.	0.20 \$250.00/hr	\$50.00
8/5/2011 Order from court; letter to client.	0.30 \$250.00/hr	\$75.00
8/9/2011 Work on miscellaneous matters.	0.20 \$250.00/hr	\$50.00
8/12/2011 Call court; letter to court.	0.40 \$250.00/hr	\$100.00
8/15/2011 Telephone call from court; letter re: same; conference re: case issues.	0.40 \$250.00/hr	\$100.00
8/19/2011 Letter to/from PS, client.	0.30 \$250.00/hr	\$75.00
8/24/2011 Letter to/from PS.	0.20 \$250.00/hr	\$50.00
8/25/2011 Letter re: discovery.	0.20 \$250.00/hr	\$50.00
8/26/2011 Prepare for depo; letter to client.	0.40 \$250.00/hr	\$100.00

0780

	<u>Hrs/Rate</u>	<u>Amount</u>
8/29/2011 Depo preparation.	0.80 \$250.00/hr	\$200.00
8/30/2011 Conference with client; prepare for deposition; attend same.	2.90 \$250.00/hr	\$725.00
9/2/2011 Letter to/from PS; review discovery.	0.30 \$250.00/hr	\$75.00
9/5/2011 Letter to/from counsel.	0.20 \$250.00/hr	\$50.00
9/7/2011 Work on discovery.	0.20 \$250.00/hr	\$50.00
9/8/2011 Telephone call to PS; conference with client.	0.40 \$250.00/hr	\$100.00
9/13/2011 Work on discovery.	0.20 \$250.00/hr	\$50.00
9/14/2011 Work on discovery.	0.20 \$250.00/hr	\$50.00
9/15/2011 Review depo transcript; letter to client.	0.30 \$250.00/hr	\$75.00
9/19/2011 Letter re: case issues; conference with client; work on discovery responses.	0.80 \$250.00/hr	\$200.00
9/20/2011 Letter to client, counsel.	0.40 \$250.00/hr	\$100.00
9/21/2011 Letter re: discovery; letter to/from client.	0.60 \$250.00/hr	\$150.00
9/22/2011 Letter re: case issues; work on discovery.	0.30 \$250.00/hr	\$75.00
9/27/2011 Conference with client; work on discovery.	0.50 \$250.00/hr	\$125.00
9/28/2011 Letter re: discovery.	0.40 \$250.00/hr	\$100.00
9/29/2011 Letter re: discovery.	0.20 \$250.00/hr	\$50.00
9/30/2011 Letter re: depo; draft motion, affidavit, correspondence; work on discovery responses.	0.70 \$250.00/hr	\$175.00

0781

	<u>Hrs/Rate</u>	<u>Amount</u>
10/3/2011 Work on discovery responses; letter re: same; draft motions.	0.60 \$250.00/hr	\$150.00
10/10/2011 Draft answers to discovery requests; assemble documents; draft summary judgment motion, multiple correspondence; draft discovery requests to Plaintiffs; assemble exhibits.	3.20 \$250.00/hr	\$800.00
10/11/2011 Revise discovery responses; letter to client; draft withdrawal of motion.	0.80 \$250.00/hr	\$200.00
10/12/2011 Letter re: discovery.	0.20 \$250.00/hr	\$50.00
10/13/2011 Letter from counsel.	0.20 \$250.00/hr	\$50.00
10/14/2011 Draft summary judgment pleadings.	0.40 \$250.00/hr	\$100.00
10/17/2011 Letter to/from client; draft summary judgment pleadings; review pleadings.	1.70 \$250.00/hr	\$425.00
10/18/2011 Draft affidavit; research summary judgment motion; revise pleadings, correspondence; draft summary judgment pleadings; revise same.	3.90 \$250.00/hr	\$975.00
10/19/2011 Work on summary judgment materials; revise record; letter to court; review Defendants' brief; correspondence re: same.	4.60 \$250.00/hr	\$1,150.00
10/25/2011 Work on response materials re: summary judgment.	0.60 \$250.00/hr	\$150.00
10/31/2011 Letter to/from counsel; work on summary judgment response.	0.50 \$250.00/hr	\$125.00
11/2/2011 Miscellaneous correspondence; work on summary judgment response.	0.60 \$250.00/hr	\$150.00
11/3/2011 Draft response to summary judgment motion; review record; letter to client; draft affidavit; review and revise pleadings.	4.90 \$250.00/hr	\$1,225.00
11/4/2011 Letter re: case issues.	0.20 \$250.00/hr	\$50.00
11/7/2011 Letter to PS.	0.20 \$250.00/hr	\$50.00
11/8/2011 Letter re: case issues; letter to/from counsel; work on response.	0.60 \$250.00/hr	\$150.00

	<u>Hrs/Rate</u>	<u>Amount</u>
11/10/2011 Conference with client; draft extensive response to motion to strike and motion for summary judgment, correspondence re: same; revise pleadings; review reply brief of Plaintiffs.	3.70 \$250.00/hr	\$925.00
11/14/2011 Prepare for hearing.	0.30 \$250.00/hr	\$75.00
11/16/2011 Prepare for and attend hearing on summary judgment motions; letter to and calls to clients.	4.50 \$250.00/hr	\$1,125.00
11/17/2011 Letter to/from client; conference with counsel, client.	0.90 \$250.00/hr	\$225.00
11/18/2011 Conference with client; miscellaneous correspondence.	0.50 \$250.00/hr	\$125.00
11/28/2011 Letter re: case issues.	0.20 \$250.00/hr	\$50.00
11/30/2011 Telephone call to re: case issues.	0.20 \$250.00/hr	\$50.00
For professional services rendered	64.20	\$16,050.00

0783

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 989

2012 JAN 10 PM 3:55

CLERK DISTRICT COURT

Debra Zook
DEPUTY D2

PETER J. SMITH IV
ISB #6997
LUKINS & ANNIS, P.S.
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601 E. Front Avenue
Coeur d'Alene, ID 83814-5155
Telephone: (208) 667-0517
Facsimile: (208) 664-4125
Email: pjs@lukins.com

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
limited liability company; ROBERT C.
SAMUEL; JOE K. DONALD AND LISBETH
LILLEMORE DONALD, husband and wife;
WAYNE A. GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29, 1991;
RUSSELL M. WICKS AND EVELYN L.
WICKS, husband and wife; BUDDY C.
STANLEY AND JUDITH L. STANLEY,
Trustees of the Stanley Family Trust dated
February 26, 2004; CRAIG R. FALLON AND
M. ELLEN FALLON, husband and wife,

Plaintiffs,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
an Idaho limited liability company,

Defendant.

NO. CV-2011-2786

STIPULATION

STIPULATION: 1

Plaintiffs and Defendant hereby stipulate as follows:

1. As the prevailing party before the District Court, the Defendant is entitled to the award of costs in the amount of \$217.85 as a matter of right pursuant to I.R.C.P. 54(d)(1)(C).
2. As the prevailing party before the District Court, the Defendant is entitled to the award of attorney fees in the amount of \$17,000.00 under Section 24.8 of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BLACK ROCK OF A PLANNED UNIT DEVELOPMENT recorded as Kootenai County Instrument No. 1689309. Exhibit "1" of PLAINTIFFS' SUBMISSION OF CERTIFIED DOCUMENTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT at page 59.

DATED this 9th day of January, 2012.

LUKINS & ANNIS, P.S.

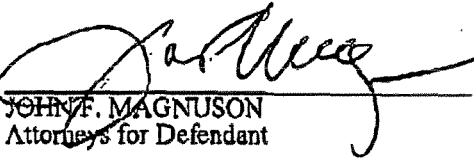
By



PETER J. SMITH IV
Attorneys for Plaintiffs

DATED this 9th day of January, 2012.

By



JOHN F. MAGNUSON
Attorneys for Defendant

STIPULATION: 2

John F. Magnuson
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, ID 83814
(208) 667-0100
(208) 667-0500 - facsimile
ISB #4270

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
FILED: 2/8/12
AT 5:00 O'CLOCK P.M.
CLERK, DISTRICT COURT
Debra [Signature]
DEPUTY
dir

Attorney for Defendant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company; ROBERT
C. SAMUEL, a married man; JOE K.
DONALD AND LISBETH LILLEMORE
DONALD, husband and wife; WAYNE A.
GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29,
1991; RUSSELL M. WICKS AND
EVELYN L. WICKS, husband and wife;
BUDDY C. STANLEY AND JUDITH L.
STANLEY, Trustees of the Stanley Family
Trust dated February 26, 2004; CRAIG R.
FALLON AND M. ELLEN FALLON,
husband and wife,

Plaintiffs,

vs.

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Defendant.

NO. CV-11-2786

FINAL JUDGMENT

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Counterclaim Plaintiff,

vs.

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company; ROBERT
C. SAMUEL, a married man; JOE K.
DONALD AND LISBETH LILLEMORE
DONALD, husband and wife; WAYNE A.
GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29,
1991; RUSSELL M. WICKS AND
EVELYN L. WICKS, husband and wife;
BUDDY C. STANLEY AND JUDITH L.
STANLEY, Trustees of the Stanley Family
Trust dated February 26, 2004; CRAIG R.
FALLON AND M. ELLEN FALLON,
husband and wife,

Counterclaim Defendants.

FINAL JUDGMENT - INTERPRETATION OF DECLARANT RIGHTS

On December 13, 2011, the Court issued its Memorandum Opinion and Order on Sky Canyon's Motion to Strike and Cross-Motions for Summary Judgment. Therein, the Court denied Plaintiff Sky Canyon et al.'s Motion for Summary Judgment, and granted Defendant The Golf Club's Motion for Summary Judgment. The parties' respective claims were fully briefed and argued to the Court and the Court held as follows:

1. Plaintiffs contended that the Defendant was not and is not qualified as the Successor Declarant under that certain "Declaration of Covenants, Conditions and Restrictions of Black Rock, a Planned Unit Development," recorded as Kootenai County Instrument No. 1689309. Defendant

claimed that it was and is qualified as the Successor Declarant under said Instrument. The parties' respective positions were fully-briefed and argued to the Court. The parties' cross-motions for summary judgment, and the claims embodied therein, require that this Court construe the parties' respective positions in light of the language contained in Section 27.7 of Instrument No. 1689309 (hereafter "the CC&Rs").

2. As a matter of law, the Court finds that the applicable language contained in the CC&Rs is unambiguous.

3. As a matter of law, even if the CC&R language was ambiguous, Plaintiffs' proposed interpretation is not reasonable, and the ambiguity is resolved in favor of Defendant and against Plaintiffs.

4. No genuine issues of material fact exist.

5. Plaintiffs' Motion for Summary Judgment is DENIED and Defendant's Motion for Summary Judgment is GRANTED. The reasons and authorities supporting the Court's ruling are set forth in full in the Court's Memorandum Opinion and Order, entered December 13, 2011. Thus,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT, the Defendant, The Golf Club at Black Rock, LLC has qualified as the Successor Declarant for all purposes under that certain "Declaration of Covenants, Conditions and Restrictions of Black Rock, a Planned Unit Development," recorded as Kootenai County Instrument No. 1689309.

FINAL JUDGMENT - AWARD OF ATTORNEY FEES

On December 22, 2011, Defendant timely filed its Memorandum of Costs and Attorney Fees, seeking \$217.85 in costs as a matter of right pursuant to IRCP 54(d)(1)(c); and seeking \$17,000.00 in attorney fees under Section 24.8 of the "Declaration of Covenants, Conditions and Restrictions

of Black Rock, a Planned Unit Development," recorded as Kootenai County Instrument No. 1689309.

On January 10, 2012, the parties filed a Stipulation before the District Court, agreeing Defendant is the prevailing party and as the prevailing party, Defendant is entitled to the award of costs and attorney fees.

Based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that

1. As the prevailing party before the District Court, Defendant is entitled to an award of costs in the amount of \$217.85 under IRCP 54(d)(1)(c).

2. As the prevailing party before the District Court, Defendant is entitled to an award of attorney fees in the amount of \$17,000.00 under Section 24.8 of the "Declaration of Covenants, Conditions and Restrictions of Black Rock, a Planned Unit Development," recorded as Kootenai County Instrument No. 1689309.

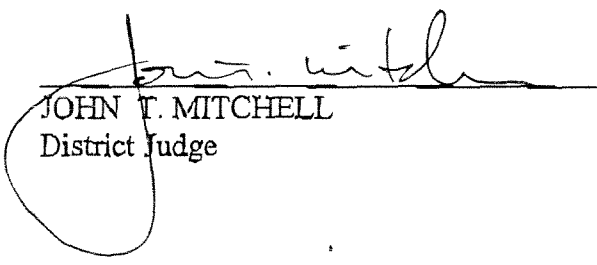
3. Accordingly, judgment in the principal amount of \$17,217.85 is hereby entered in favor of Defendant, The Golf Club at Black Rock, LLC, and against the following Plaintiffs, jointly and severally:

Sky Canyon Properties, LLC, an Idaho limited liability company;
Robert C. Samuel;
Joe K. Donald and Lisbeth Lillemore Donald,;
Wayne A. Gianotti and Carolyn M. Gianotti, Trustees of the Gianotti
Revocable Trust U-a Dated January 29, 1991;
Russell M. Wicks and Evelyn L. Wicks;
Buddy C. Stanley and Judith L. Stanley, Trustees of the Stanley
Family Trust Dated February 26, 2004; and
Craig R. Fallon and M. Ellen Fallon.

4. This Final Judgment shall bear interest at the statutory rate provided under Idaho Code.

JUDGMENT IS SO ORDERED.

DATED this 8th day of February, 2012.


JOHN T. MITCHELL
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9 day of February, 2012, I caused to be served a true and correct copy of the foregoing document upon the persons named below, at the addresses set out below their name, either by mailing to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; by overnight mail; or by facsimile transmission.

John F. Magnuson

Attorney at Law

P.O. Box 2350

1250 Northwood Center Court, Suite A

Coeur d'Alene, ID 83814

☐ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ FACSIMILE
667-0500

Peter J. Smith IV

Mischelle R. Fulgham

Lukins & Annis, P.S.

601 E. Front Avenue, Ste. 502

Coeur d'Alene, ID 83814-5155

☐ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ FACSIMILE
664-4125

#4517
CLERK OF THE DISTRICT COURT

By:

DEPUTY CLERK

BR-GOLF CLUB-SKY CANYON-FINALJUDG2.wpd

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED *BS* #881

2012 FEB 22 PM 4:39

CLERK DISTRICT COURT

Sherry Hulbina
DEPUTY

PETER J. SMITH IV
ISB #6997
LUKINS & ANNIS, P.S.
Suite 502
601 E. Front Avenue
Coeur d'Alene, ID 83814-5155
Telephone: (208) 667-0517
Facsimile: (208) 664-4125

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
limited liability company; ROBERT C.
SAMUEL; JOE K. DONALD AND LISBETH
LILLEMORE DONALD, husband and wife;
WAYNE A. GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29, 1991;
RUSSELL M. WICKS AND EVELYN L.
WICKS, husband and wife; BUDDY C.
STANLEY AND JUDITH L. STANLEY,
Trustees of the Stanley Family Trust dated
February 26, 2004; CRAIG R. FALLON AND
M. ELLEN FALLON, husband and wife,

Plaintiffs,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
an Idaho limited liability company,

Defendant.

NO. CV-11-2786

AFFIDAVIT OF PETER J. SMITH IV
IN SUPPORT OF MOTION FOR
DISQUALIFICATION

AFFIDAVIT OF PETER J. SMITH IV IN SUPPORT OF
MOTION FOR DISQUALIFICATION: 1

STATE OF IDAHO)
 : ss
County of Kootenai)

PETER J. SMITH IV, being first duly sworn upon oath, deposes and says:

1. I am the attorney of record for the Plaintiffs.
2. On January 6, 2012, I reviewed the Idaho Repository online to see what motions were filed in *Jacklin Land Company v. Blue Dog RV, Inc. et al.*, Kootenai County Case No. CV-2008-0006756 after the motion for summary judgment was resolved.
3. I discovered that Judge Mitchell voluntarily disqualified himself in *Jacklin Land Company v. Blue Dog RV Inc, et al.*, Kootenai County Case No. CV-2008-0006752 on January 25, 2010.
4. Also on Friday, January 6, 2012, I spoke with John F. Magnuson.
5. He informed me of the facts stated in this Affidavit.
6. I learned that John F. Magnuson represents a conservator for Judge Mitchell's father.
7. It is my understanding that this representation commenced at some time prior to January 25, 2010, and the representation continues today.
8. After speaking with Mr. Magnuson, I spoke with Mike Hines, a partner at this firm, about the disqualification. His recollection of the facts was the same as Mr. Magnuson explained.
9. This was the first time that I had spoken to Mr. Hines regarding the *Jacklin Land Company v. Blue Dog RV, Inc. et al.* case.
10. This disqualification was evidently precipitated by the representation by John F. Magnuson of the conservator for Judge Mitchell's father.
11. It is not clear why the Judge voluntarily disqualified himself in the *Jacklin Land Company v. Blue Dog RV Inc* case.

AFFIDAVIT OF PETER J. SMITH IV IN SUPPORT OF
MOTION FOR DISQUALIFICATION: 2

12. Prior to January 6, 2012, I was not aware of the facts stated in this affidavit.
13. However, it appears that the Court was concerned the representation of the conservator of Judge Mitchell's father or a close personal relationship between Judge and Counsel could be viewed as bias or prejudice in favor of the arguments made by John F. Magnuson.
14. It is upon these grounds that Plaintiffs seek the disqualification of Judge Mitchell for cause.

DATED this 22nd day of February, 2012.

LUKINS & ANNIS, P.S.

By PJS
PETER J. SMITH IV
ISB #6997
Attorneys for Plaintiffs

SUBSCRIBED AND SWORN TO before me this 22nd day of February, 2012.

Kristine M. Scott
Notary Public
State of Idaho

Kristine M. Scott
Notary Public for Idaho
Residing at Post Falls
Commission Expires 12/31/2016

AFFIDAVIT OF PETER J. SMITH IV IN SUPPORT OF
MOTION FOR DISQUALIFICATION: 3

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of February, 2012, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

John F. Magnuson
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, Idaho 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy (FAX) 208-667-0500

Honorable John T. Mitchell
Kootenai County Courthouse
324 West Garden Avenue
Coeur d'Alene, Idaho 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy (FAX) 208-446-1132



PETER J. SMITH IV

AFFIDAVIT OF PETER J. SMITH IV IN SUPPORT OF
MOTION FOR DISQUALIFICATION: 4

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: *SR #890*

2012 FEB 22 PM 4:48

CLERK DISTRICT COURT
Paul Cumpack
DEPUTY

MISCHELLE R. FULGHAM, ISB #4623
PETER J. SMITH IV, ISB #6997
LUKINS & ANNIS, P.S.
601 E. Front Avenue, Suite 502
Coeur d'Alene, ID 83814-5155
Telephone: (208) 667-0517
Facsimile: (208) 664-4125
Email: pjs@lukins.com and mfulgham@lukins.com

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
limited liability company; ROBERT C.
SAMUEL; JOE K. DONALD AND LISBETH
LILLEMORE DONALD, husband and wife;
WAYNE A. GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29, 1991;
RUSSELL M. WICKS AND EVELYN L.
WICKS, husband and wife; BUDDY C.
STANLEY AND JUDITH L. STANLEY,
Trustees of the Stanley Family Trust dated
February 26, 2004; CRAIG R. FALLON AND
M. ELLEN FALLON, husband and wife,

Plaintiffs,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
an Idaho limited liability company,

Defendant.

NO. CV-2011-2786

**MOTION FOR RECONSIDERATION
OF FINAL JUDGMENT ENTERED
FEBRUARY 8, 2012**

**[IRCP 7(b)(3)(B) ORAL ARGUMENT
REQUESTED AND BRIEF TO BE
FILED WITHIN 14 DAYS]**

MOTION FOR RECONSIDERATION: 1

INTRODUCTION AND GOVERNING RULE

Idaho Civil Procedure Rule 11(a)(2)(B) provides for reconsideration of this Court's February 8, 2012 Judgment. This Motion for Reconsideration is supported by the pleadings and submissions on file, together with the summary judgment materials filed by the Plaintiffs in support of their motion, and the newly filed evidence contained in the Affidavit of Jay Lockhart (including all exhibits attached and included therein). A supporting memorandum of law will be filed within fourteen (14) days as provided in IRCP 7(b)(3)(C).

Pursuant to Rule 11(a)(2)(B), Plaintiffs ask this Court to reconsider its February 8, 2012 judgment. The Court's decision held that by merely owning a small portion of the Black Rock PUD acreage, namely the fully developed golf course, and without owning any future open space realty or residential real property, that as a matter of law, Defendant took *"title to...part of the Property in a bulk purchase for the purpose of development and sale."* New evidence exists contrary to this Court's finding that Section 27.7 does not require a Successor Declarant to take title to Black Rock PUD real property for the purpose of development and sale of that real property. This new evidence demonstrates that merely selling future golf course memberships does not constitute development and sale of the Black Rock PUD property under the CCRs and the conditions approved by Kootenai County; nor does mere ownership of the golf course land within the platted Black Rock PUD qualify for future development and sale as governed by the Kootenai County Planning and Zoning regulations and the Kootenai County Board of County Commissioners' Orders of Decision approving the Black Rock PUD.

MOTION FOR RECONSIDERATION: 2

A Successor Declarant must own real property, not merely personal property such as golf course memberships for development and sale. The stated and expressed intent of the CCR's Declaration is to regulate the Black Rock PUD for the mutual benefit of the future Owners and occupants, and to be "an esthetically pleasing family oriented residential development." However, this Defendant, as Successor Declarant, does not own any real property for residential development and can not accomplish the specific and expressed intent "for an esthetically pleasing family oriented residential development" as set out in the CCR's Declaration. Likewise, as a mere golf course owner, Defendant can not ensure that the entire Black Rock PUD, (consisting of 674 acres and approved for 381 residential dwellings) is regulated and used for the mutual benefit of future residential Owners and occupants. Defendant owns and controls only the golf course property-nothing else. Defendant can not provide residential development or sales, nor can Defendant sell land or create any future Owners or occupants of the Black Rock PUD property as required in the CCRs. Thus, because Defendant's limited golf course land is incapable of any further development or sale, Defendant fails to qualify as a Successor Declarant under the CCRs.

As indicated in the supporting Affidavit of Kootenai County Planner Jay Lockhart (including all exhibits), additional evidence exists for this Court to review in reconsideration of its prior judgment. The supporting affidavit demonstrates that the Black Rock PUD is primarily a residential project. The Lockhart Affidavit focuses on the mandatory Kootenai County Planning and Zoning requirements imposed by the Kootenai County Zoning Ordinance,

MOTION FOR RECONSIDERATION: 3

the PUD approvals, and the PUD plan depiction and subsequent subdivision plats. This land use evidence demonstrates the Kootenai County Commissioners issued restrictions and conditions when this Black Rock PUD was approved. Without owning any residential real property or future open space acreage, the Defendant is completely incapable of meeting the purpose and intent of future development or accomplishing the sale of any Black Rock real property as intended within this residential PUD development. The small golf course acreage (approximately 200+/- acres out of 647 total PUD acres) owned by Defendant is already fully built out and fully occupied as a golf course with supporting recreational uses. Any future development and sale of real property will necessarily have to occur outside of the golf course, in the remaining and undeveloped portion of the PUD's remaining total 674 acres. Thus, as a matter of law under the governing land use and zoning restrictions in the Kootenai County Zoning Code, Defendant's land is unable to be further developed and sold as is required for Successor Declarant status by the CCRs. Under the Kootenai County zoning regulations and the Board of County Commissioners' Orders of Decision approving the Black Rock PUD, Defendant's land must remain a golf course. Under these laws and the Kootenai County Board of Commissioners' Orders of Decision, a golf course is all Defendant's land can be used as; no further development or sale of Defendant's golf course land can occur.

Contrarily, the PUD's remaining residential land and the future open space land (approximately 474 acres) are the only real properties physically or legally capable of future development and sale. Defendant owns none of this land. Thus, because Defendant's golf course land does not include any of the approved PUD's future development land or the residential land depicted within the Black Rock PUD plat, it follows that ownership of

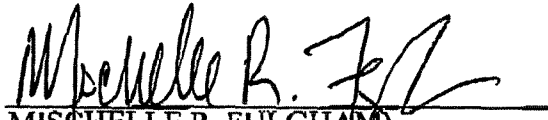
MOTION FOR RECONSIDERATION: 4

Defendant's land does not qualify Defendant as a Successor Declarant. Simply put, under the terms and conditions of the Kootenai County Commissioners' Orders of Decision and their approvals for the Black Rock PUD, there can be no further development and sale of the Defendant's golf course acreage. Because Defendant does not own any land eligible for future development and sale, Defendant is not a Successor Declarant.

Pursuant to IRCP 7(b)(3)(B), oral argument is requested and a supporting brief will be filed within fourteen (14) days.

DATED this 22nd day of February, 2012.

LUKINS & ANNIS, P.S.

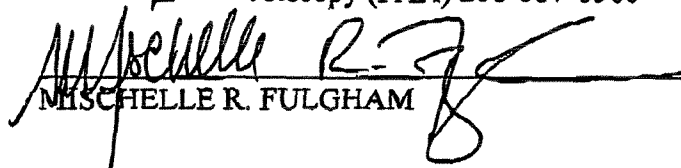
By 
MISCHELLE R. FULGHAM
ISB # 4623
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22 day of February, 2012, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

John F. Magnuson
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, Idaho 83814

- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ Telecopy (FAX) 208-667-0500


MISCHELLE R. FULGHAM

MOTION FOR RECONSIDERATION: 5

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED

2012 FEB 22 PM 4:02

CLERK DISTRICT COURT
Barb Crumpacker
DEPUTY

MISCHELLE R. FULGHAM, ISB #4623
PETER J. SMITH IV, ISB #6997
LUKINS & ANNIS, P.S.
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Coeur d'Alene, ID 83814
Telephone: (208) 667-0517
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Email: pjs@lukins.com and mfulgham@lukins.com

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
limited liability company; ROBERT C.
SAMUEL; JOE K. DONALD AND LISBETH
LILLEMORE DONALD, husband and wife;
WAYNE A. GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29, 1991;
RUSSELL M. WICKS AND EVELYN L.
WICKS, husband and wife; BUDDY C.
STANLEY AND JUDITH L. STANLEY,
Trustees of the Stanley Family Trust dated
February 26, 2004; CRAIG R. FALLON AND
M. ELLEN FALLON, husband and wife,

Plaintiffs,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
an Idaho limited liability company,

Defendant.

NO. CV-2011-2786

AFFIDAVIT OF JAY LOCKHART IN
SUPPORT OF MOTION FOR
RECONSIDERATION

AFFIDAVIT OF JAY LOCKHART IN SUPPORT OF MOTION FOR RECONSIDERATION: 1

STATE OF IDAHO)
 :SS.
County of Kootenai)

JAY LOCKHART, being first duly sworn on oath, deposes and says:

1. I am over the age of 18 and competent to testify to the facts stated herein.
2. I am familiar with the facts and information presented herein.
3. I am employed as a Planner II with Kootenai County Community Development.

As part of my duties and responsibilities in my employment, I handle subdivision and PUD applications for real property developments located in Kootenai County, Idaho. I have been employed as a Planner in Kootenai County since 2006.

4. Although I was not an employee of Community Development (previously Building and Planning) at the time Black Rock Planned Unit Development, Case No. PUD-037-99 (hereinafter "PUD"), was processed and approved, and in the absence of the Project Planner that originally worked on this project, I have become generally familiar with this PUD through the periodic review of the file(s) to answer specific questions.

5. Case No. PUD-037-99, consists of **674 acres of land** in the rural and restricted residential zones.

6. The PUD is a residential development consisting of a maximum of 381 single-family dwellings, including 177 high-density residential units such as zero lot line homes, condominiums, timeshares and/or pooled units. In addition to the 381 residences, the PUD

AFFIDAVIT OF JAY LOCKHART IN SUPPORT OF MOTION FOR RECONSIDERATION: 2

includes some recreational facilities such as a golf course, clubhouse/restaurant, pool, tennis courts, and sales office.

7. The Kootenai County Zoning Ordinance 159 Chapter 15 governs PUDs, including the Black Rock PUD. Attached hereto as **Exhibit A** is a true and correct copy of the Kootenai County Zoning Ordinance 159, including Chapter 15, entitled Planned Unit Development (Overlay District).

8. Attached to this Affidavit as **Exhibit B** is a true and correct copy of the Board of County Commissioners of Kootenai County, Idaho, Order of Decision, for the PUD, Planning Department Case No. PUD-037-99, dated May 10, 2000.

9. The PUD Order of Decision, **Exhibit B**, sets out and contains the Findings of Fact, Comprehensive Plan Analysis, Conclusions of Law, and Order of Decision imposed by the Board of County Commissioners controlling the initial approval of the PUD.

10. Attached to this Affidavit as **Exhibit C** is a true and correct copy of the Board of County Commissioners of Kootenai County, Idaho, Modified Order of Decision, for the PUD, Planning Department Case No. PUD-037-99, dated December 20, 2000. Herein, the Board of County Commissioners modified some of the Findings of Fact, Conclusions of Law, and terms of their previous Black Rock Order of Decision.

11. The Modified PUD Order of Decision, **Exhibit C**, sets out and contains the modified Findings of Fact, Comprehensive Plan Analysis, Conclusions of Law, and Order of


AFFIDAVIT OF JAY LOCKHART IN SUPPORT OF MOTION FOR RECONSIDERATION: 3

Decision imposed by the Board of County Commissioners controlling the modified approval of the PUD.

12. Thereafter, as required by the County Commissioners, the PUD development plan was submitted to and approved by Kootenai County, and subsequent subdivisions were approved. True and correct copies of the PUD development plan and subdivision plats of portions of Sections 8, 9, 16, 7, 17, are attached hereto as **Exhibit D** and incorporated herein by reference.

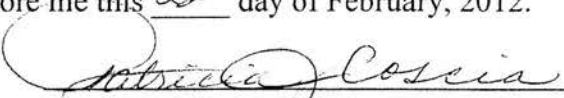
13. Exhibits A, B, C, and D are official business records kept and maintained in the ordinary course of business for the Kootenai County Community Development. I am generally knowledgeable and familiar with the maintenance of this business record within my Department.

DATED this 22 day of February, 2012.


JAY LOCKHART

SUBSCRIBED AND SWORN TO before me this 22 day of February, 2012.




Notary Public for Idaho
Residing at COEUR D'ALENE
Commission Expires 2-5-2015

AFFIDAVIT OF JAY LOCKHART IN SUPPORT OF MOTION FOR RECONSIDERATION: 4

CERTIFICATE OF SERVICE

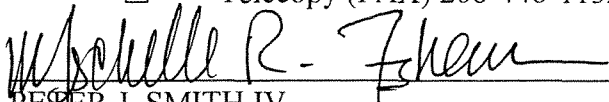
I HEREBY CERTIFY that on the 22nd day of February, 2012, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

John F. Magnuson
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, Idaho 83814

- ☐ U.S. Mail
- ☒ Hand Delivered
- ☐ Overnight Mail
- ☐ Telecopy (FAX) 208-667-0500

Honorable John T. Mitchell
Kootenai County Courthouse
324 West Garden Avenue
Coeur d'Alene, Idaho 83814

- ☐ U.S. Mail
- ☒ Hand Delivered
- ☐ Overnight Mail
- ☐ Telecopy (FAX) 208-446-1132



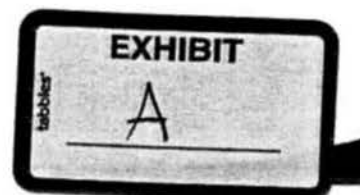
PETER J. SMITH IV
MISCHELLE R. FULGHAM

KOOTENAI COUNTY

ZONING ORDINANCE NO. 159

This document readopts Kootenai County
Zoning Ordinance No. 11 and all amendments to
that Ordinance since January 3, 1973.

0806



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KOOTENAI COUNTY ZONING ORDINANCE
ORDINANCE NO. 11 AS AMENDED

ORDINANCE NO. 159

KOOTENAI COUNTY ZONING ORDINANCE

AN ORDINANCE IN AND FOR THE UNINCORPORATED AREAS OF KOOTENAI COUNTY, IDAHO, PROVIDING FOR THE ESTABLISHMENT OF ZONING REGULATIONS; PROVIDING FOR THE PURPOSE OF THE ZONING ORDINANCE AND ITS PROVISIONS; SETTING FORTH TERMS AND DEFINITIONS; ESTABLISHING ZONES AND ZONING DISTRICTS; PROVIDING FOR AN OFFICIAL ZONING MAP; SETTING FORTH RULES FOR INTERPRETATION OF ZONE BOUNDARIES; PROVIDING FOR APPLICATION OF ZONE REGULATIONS; PROVIDING FOR ZONING DISTRICT REGULATIONS, OVERLAY ZONES, PERMITTED USES, CONDITIONAL USES, PERMITTED BUILDINGS AND STRUCTURES, PARKING, ROAD FRONTAGE AND ACCESS, LOADING AREAS, HOME OCCUPATIONS, SIGNS, PERFORMANCE STANDARDS, SETBACK REQUIREMENTS, VISIBILITY AT INTERSECTIONS, ACCESSORY BUILDINGS, STRUCTURES PER LOT, EXCEPTIONS TO HEIGHT AND SETBACK LIMITATIONS, PARKING AND STORAGE OF RECREATIONAL VEHICLES, AND TEMPORARY HARDSHIP USES; PROVIDING FOR NONCONFORMING USES AND STRUCTURES; PROVIDING FOR AMENDMENTS TO THE ZONING ORDINANCE AND OFFICIAL ZONING MAP; PROVIDING FOR ADMINISTRATION AND ENFORCEMENT OF THE ZONING ORDINANCE; REQUIRING A CERTIFICATE OF OCCUPANCY FOR STRUCTURES; PROVIDING FOR MISDEMEANOR CRIMINAL PENALTIES AND/OR CIVIL REMEDIES IN THE EVENT OF VIOLATION OF THIS ORDINANCE; PROVIDING FOR THE SETTING OF FEES BY RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS; ESTABLISHING THE BOARD OF ADJUSTMENT AND HEARING EXAMINER PROCEDURES AND DUTIES; PROVIDING FOR A PROCESS OF APPEAL; PROVIDING FOR SEVERABILITY OF SECTIONS; ESTABLISHING PERFORMANCE STANDARDS FOR CONDITIONAL USES; REPEALING CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO:

ARTICLE 1
PURPOSE OF ZONING ORDINANCE

The Zoning Regulations and Districts as herein established have been made in accordance with a Comprehensive Plan for the Purpose of promoting the Health, Safety, Morals, and the General Welfare of Kootenai County. They have been designed to lessen the congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. They have been made with reasonable consideration, among other things, for the character of the district and its peculiar suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of the land throughout the unincorporated areas of Kootenai County.

ARTICLE 2
RULES AND DEFINITIONS

SECTION 2.01 GENERAL

The rules and definitions contained in this Section shall be observed and applied, except when the context clearly indicates:

- A. Words used in the present tense shall include the future and words used in the singular number shall include the plural number and the plural the singular.
- B. The word "shall" shall be mandatory and not discretionary.
- C. The word "may" is permissive.
- D. The word "lot" shall include the word "piece" and "parcel"; the word "building" includes all other structures of every kind regardless of similarity to buildings; and the phrase "used for" shall include the phrases "arranged for", "designed for", "maintained for", and "occupied for".

SECTION 2.02 DEFINITIONS

ACCESSORY BUILDING OR USE - A use which:

- A. Is subordinate to and serves a principal building or principal uses; and
- B. Is subordinate in area, extent, or purpose to the principal building, or principal use served; and
- C. Contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use served; and
- D. Is located on the same zoning lot as the principal building or principal use served with the single exception of such accessory off-street parking facilities as are permitted to be located elsewhere than on the same zoning lot with the building or use served.

ACREAGE - Any tract of land or parcel of land which has not been subdivided or platted.

ADMINISTRATOR - An official having knowledge in the principles and the practices of Ordinance administration, who is appointed by the Board of County Commissioners to administer the Kootenai County Subdivision and Zoning Ordinances. Said Administrator may select a designee or designees to assist in the administration of the provisions and procedures of said Ordinances.

AIRCRAFT PARKING AREAS - Those areas designated as parking areas for parking and maneuvering aircraft while on the ground. "Tie-down" areas shall also mean aircraft parking areas and will be marked by "tie-down" to denote this area.

AIRPORT - Any area of land or water designed and set aside for landing and take-off of aircraft and utilized or to be utilized in the interest of the public for such purposes.

AIRPORT ADVISORY BOARD - The Board consisting of members as defined by current by-laws to provide information and recommendations to the Airport Manager and County Commissioners pertaining to airport flight-line operations and development in the Airport Operations Area.

AIRPORT DEVELOPMENT CONTROL COMMITTEE - The Committee consisting of members as defined by current by-laws to provide information and recommendations to the Airport Manager and County Commissioners pertaining to development in the Light Industrial and Terminal Support Areas in the Airport District.

AIRPORT HAZARD - Any structure, or tree, or use of land which obstructs the airspace required for the flight of aircraft in landing and taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft.

AMENDMENT - A change in the wording context, or substance of this Ordinance, or change of the zone boundaries upon the Official Zoning Map, which Map is a part of this Ordinance when adopted by Ordinance passed by the Board of County Commissioners in the manner prescribed herein.

APARTMENT HOUSE - Any building or portion thereof, which is designed, built, rented, leased, let, or hired out to be occupied as the home or residence of five or more families living independently of each other and doing their own cooking in said building and shall include flats, apartments, and multi-family dwellings. An apartment house is the same as a "multi-family dwelling". "Apartment Houses" and "Multi-Family Dwellings" refer to buildings or portions thereof, which are built, rented, leased, let, or hired out to be occupied on a permanent basis, as distinguished from a transient occupancy basis.

APPROACH - A point of access onto a publicly dedicated and maintained road for which approval has been given by the appropriate Highway District or Idaho Transportation Department.

APRON - The portion of the aircraft parking area (or tie-down area) used for access between taxiways, aircraft parking positions, hangers, and storage facilities. An apron is outside the normal area of movement for aircraft. An apron and a taxilane are the same.

AUTO WRECKING YARD, JUNK YARD - An open area where waste and scrap material are bought, sold, exchanged, stored, baled, packed, disassembled, or handled, including but not limited to, scrap iron and other metals, paper, rags, rubber tires, and bottles. A "Junk Yard" includes an auto wrecking yard, but does not include uses established entirely within enclosed buildings.

An "Auto Wrecking Yard" and "Junk Yard" are further defined as any place where two (2) or more motor vehicles not in running condition, or part thereof, are stored in the open within sight of the general public and are not being restored to operation; any land uses for any farm vehicles or farm machinery or parts thereof, stored in the open in an disorderly manner and not being restored to operation conditions; and including the commercial salvaging and scavenging of any other goods, articles, or merchandise.

BED AND BREAKFAST - An owner-occupied single-family residence which provides up to five (5) rooms for lodging and breakfast for paying guests.

BOARD OF ADJUSTMENT - The Kootenai County Board of Adjustment, herein referred to as the Board of Adjustment.

BOARD OF COUNTY COMMISSIONERS - The Board of County Commissioners of Kootenai County, Idaho, herein further referred to as the Board.

BUILDING - See "STRUCTURE".

BUILDING HEIGHT - The vertical distance at the center of the building's front measured from the average elevation of the finished grade along the front of the building to the highest point of the coming of a flat roof, or to the deck line of a measured roof, or to the average height of the highest gable of a pitch or hip roof, excepting chimneys and steeples.

BUILDING LINE - A line denoting the outer perimeter of a structure that is permanently affixed to the land.

BUILDING RESTRICTION LINE - A line established by the Federal Aviation Administration across which no structural development may occur. These lines normally connect in such a fashion as to enclose an area in which no structures may be built, except those necessary and incidental to airport operations.

CLEAR ZONE (CLEARWAY) - An area beyond the stop end of a runway, not less than 500 feet (150m) wide, centered on the extended centerline of the runway, and controlled by airport authorities.

CLINIC - A building or portion of a building containing offices for providing medical, dental, or psychiatric services for outpatients only.

COMMERCIAL RESORT - A privately-owned, outdoor recreation area, operated for profit. A commercial resort may include permanent facilities for overnight or seasonal living, camping areas, recreational vehicle parks, and limited commercial activities associated with convenience goods and services that serve to enhance the primary recreational use or activity.

CONDITIONAL USE - A use listed among those classified in any given zone but permitted to locate only after review and which requires a special degree of control to make such use compatible with other permitted uses in the same vicinity and zone and assure against imposing excessive demands upon public utilities and facilities.

DAY CARE CENTER - Any child care arrangement that provides care and supervision for compensation during any part of a 24-hour day for more than thirteen (13) children. See Idaho Code 39-1102.

DAY CARE FACILITY - Any child care arrangement that provides care and supervision for compensation during any part of a 24-hour day for up to twelve (12) children. See Idaho Code 39-1102.

DECIBEL - A unit of measurement of the intensity (loudness) of sound. Sound level meters which are employed to measure the intensity of sound are calibrated in "Decibels".

DRIVEWAY - A means of access from a lot, parcel, or tract providing for vehicular access onto or from a publicly dedicated and maintained road or private road.

DWELLING - A building or portion thereof, but not an automobile house trailer or manufactured home, designed or used exclusively for residential occupancy, including one-family dwellings, two-family dwellings, and multi-family dwellings, but not including hotels and motels.

DWELLING, MULTIPLE-FAMILY - A building, or a portion thereof, containing at least three (3) but not more than four (4) dwelling units.

DWELLING, ONE-FAMILY - A building containing one (1) dwelling unit only.

DWELLING, TWO-FAMILY - A building containing two (2) dwelling units only.

DWELLING UNIT - One or more rooms which are arranged, designed, or used as living quarters for one (1) family only. Individual bathrooms are not necessarily provided, but complete single kitchen facilities permanently installed shall always be included for each "dwelling unit".

EASEMENT, PUBLIC OR PRIVATE - A grant by a property owner to specific persons or to the public to use land for specific purposes. Also, a right of use acquired by prescription, if such right has been adjudicated. No transfer of land title is implied.

FAMILY - An individual or two (2) or more persons related by blood, marriage, or adoption, or a group of not more than five (5) persons, excluding servants, who are not related by marriage, living together as a single housekeeping unit in a single dwelling unit.

FARMING, GENERAL - The production of crops and animals.

FEED LOT - An enclosed area where livestock is confined for the purpose of resale or slaughter.

FRONTAGE LENGTH - That portion of a lot, site, tract, or parcel of land, held in fee simple, adjoining a publicly dedicated and maintained road and measured as a length along said road.

GREENHOUSE, COMMERCIAL - An establishment where flowers, shrubbery, vegetables, trees, and other horticultural products are grown in the open and/or in an enclosed building for sale to the general public on a retail basis.

GREENHOUSE, WHOLESALE - An establishment where flowers, shrubbery, vegetables, trees, and other horticultural products are grown in the open and/or in an enclosed building for sale on a wholesale basis, with retail sales on premises to be on an occasional and incidental basis.

HEARING EXAMINER - An individual appointed by the Board who shall, for the purposes of this Ordinance, perform the powers and duties of the Board of Adjustment and such other duties as deemed necessary by the Board and as authorized by Idaho Code 67-6520.

HEIGHT - For the purpose of determining the height limits in the Airport District, the datum shall be the National Geodetic Vertical Datum (NGVD).

HIGHWAY DISTRICT - The agencies which have jurisdiction over secondary roads in Kootenai County. Authority results from powers vested by Idaho Code, Section 40, Chapter 6.

HOME OCCUPATION - An occupation, profession, or craft which is customarily incidental to be carried on in a dwelling place and not one in which the use of the premises as a dwelling unit is largely incidental to the occupation carried on, and which occupation is carried on by an immediate member of the family residing within the dwelling place; provided, however, there shall be no major structural alteration or changes in the dwelling. In particular, a home occupation shall include, but is not limited to, the following:

Art studio, dressmaking, upholstery, professional office of a dentist, lawyer, physician, barbershop, engineer, architect, or accountant, musical instruction (limited to a single pupil at a time), real estate office, day care facility, etc.

In particular, a home occupation shall not include the following:

Restaurants, grocery stores, or any commercial or manufacturing use specifically mentioned in some other part of this Ordinance.

Signs shall be limited to four (4) square feet and shall meet all setback requirements of the specific zone.

HOSPITAL - An institution specializing in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and injured persons and licensed by State Law to provide facilities and services in surgery, obstetrics, and general medical practice.

HOTEL - A building in which there are six (6) or more guest rooms where lodging with or without meals is provided for compensation and where no provisions are made for cooking in any individual room or suite, but shall not include jails, hospitals, asylums, sanitariums, orphanages, prisons, detention homes, and similar buildings where human beings are housed and detained under restraint.

KINDERGARTEN - A school, public or private, whether operated for a profit or not for profit, giving preschool instructions to children under seven (7) years of age.

LABORATORY - A place devoted to experimental study such as testing and analyzing. Manufacturing of a product or products is not to be permitted.

LEASE LINE - A series of lines which when connected denote the outer perimeter of a lot as described herein. These lines are described by metes and bounds in a lease agreement, the description of which has been so recorded.

LIVESTOCK - Large animals, such as horses, cattle, pigs, sheep, goats, llamas, etc.

LOT - For purposes of this Ordinance, a "Lot" is a parcel of land at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street and may consist of:

- A. A single lot of record;
- B. A portion of a lot of record;
- C. A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record;
- D. A parcel of land described by metes and bounds, provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this Ordinance.

LOT FRONTAGE - The front of a lot shall be construed to be in the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under "Yards" of this Article.

LOT LINE - The lines (lease or property lines) bounding a lot as defined herein.

LOT MEASUREMENTS -

- A. Depth of a lot shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.
- B. Width of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard; provided, however, that width between side lot lines in the foremost points (where they intersect with the street line) shall not be less than eighty (80) percent of the required lot width, except in the case of lots on the turning circle of cul-de-sacs, where the eighty (80) percent requirement shall not apply.

LOT OF RECORD - A lot which is part of a subdivision recorded in the Kootenai County Clerk and Recorder's Office or a lot or parcel described by metes and bounds or aliquot parts, the conveyance and description of which has been so recorded in the Kootenai County Clerk and Recorder's Office. A conveyance for the purposes of this Ordinance shall include any lawful, recorded instrument of title or ownership transfer. A Record of Survey as defined in the Idaho Code, Title 55, Chapter 16, is not a conveyance for the purposes of this Ordinance.

LOT TYPES -

- A. "Corner Lot" defined as a lot located at the intersection of two (2) or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost point of a lot meet at an interior angle of less than one hundred thirty-five (135) degrees.

- B. "Interior Lot" defined as a lot other than a corner lot with only one (1) frontage on a street.
- C. "Through Lot" defined as a lot other than a corner lot with frontage on more than one (1) street. Through lots abutting two (2) streets may be referred to as double frontage lots.
- D. "Reversed Frontage Lot" defined as a lot on which the frontage is at right angles or approximately right angles [interior angles less than one hundred thirty-five (135) degrees] to the general pattern in the area. A reversed frontage lot may also be a corner lot, an interior lot, or a through lot.
- E. "Water Front Lot" defined as a lot that adjoins or abuts the highwater mark of a lake, river, or stream.

MANUFACTURED HOME - (formerly mobile home) - A structure used to provide residential housing, constructed in accordance with manufactured home construction and safety standards adopted by the U.S. Department of Housing and Urban Development, but not conforming to the Uniform Building Code. The technical definition of manufactured home as set forth in Idaho Code 39-4105, Subpart (14), is adopted by reference and incorporated herein as if set out in full.

MANUFACTURED HOME PARK - A parcel of land under single ownership on which three (3) or more manufactured homes are occupied as residences. Said park may include special facilities for common use of the occupants such as recreational building, swimming pool, common open space, laundry facilities, and commercial uses incidental thereto.

MOTEL OR TOURIST COURT - A group of attached or detached buildings containing individual sleeping or living units where a majority of such units open individually and directly to the outside, and where a garage is attached or a parking space is conveniently located to each unit, all for the use by automobile tourists or transients, and such words include auto courts, motor lodges, motor inns, and similar terms.

NONCONFORMING BUILDING - A building, or portion thereof, which was lawfully erected or altered and maintained at the time this Ordinance was adopted, but which because of the application of this Ordinance to it, no longer conforms to the use, height, or area regulations of the zone in which it is located.

NONCONFORMING USE - A use which was lawfully established and maintained at the time this Ordinance was adopted, but which, because of the application of this Ordinance to it, no longer conforms to the use regulations of the zone in which it is located. A nonconforming building or nonconforming position of the building shall be deemed to constitute a nonconforming use of the land on which it is located.

NOXIOUS MATTER - A material which is capable of causing injury to living organisms by chemical reaction or is capable of causing detrimental effects upon the physical or economic well-being of individuals.

NURSERY SCHOOL - A school or organized program for the care and instruction of preschool age children under the age of six (6) years whether public or private and whether or not operated for profit.

NURSING HOME - A home, place, or institution for the care of children, the aged or infirmed, or a place of rest for those suffering bodily disorders, but not including facilities for the treatment of sickness or injuries or for surgical care.

OCTAVE BAND - A means of dividing the range of sound frequencies into octaves in order to classify sound in pitch.

OCTAVE BAND FILTER - An electrical frequency analyzer designed according to standards formulated by the American Standards Association and used in conjunction with a sound level meter to take measurements in specific octave intervals.

OPEN SPACE - Any open area, including, but not limited to, the following: Parks, yards, playgrounds, beaches, waterways, parkways, and streets.

OUTDOOR ADVERTISING STRUCTURE (BILLBOARD) - A free-standing structure of any kind or character erected or maintained for directing attention, or for outdoor advertising purposes which exceeds two hundred fifty-six (256) square feet of gross sign area, including structural elements which form an integral part of such display.

PARKING SPACE - An off-street parking area for motor vehicles which is not less than nine (9) by twenty (20) feet in area having access to a public street, alley, or private driveway.

PERFORMANCE STANDARD - A criterion established to control noise, odor, smoke, toxic or noxious mater, vibration, fire, and explosive hazards, and glare or heat generated by or inherent in uses of land or buildings.

PLANNING AND ZONING COMMISSION - The Kootenai County Planning and Zoning Commission, herein further referred to as the Commission.

PROPERTY LINE - A series of lines which when connected denote the outer perimeter of a lot as described herein. These lines are described by metes and bounds, and meet the criteria defined as establishing a separate parcel as a "Lot of Record", or as a legally "Subdivided" parcel.

PUBLIC OFFICE BUILDING - A structure used as the office or for the purpose of conducting official business by an agency of the Federal Government, State Government, or a political subdivision of the State of Idaho.

- A. **Public Utility Complex Facility** - A public utility facility of major importance involving construction of facilities of a complex nature including, but not limited to: station houses or station grounds, pumping stations, power substations, dam structures, fire stations, telephone transmission stations, telegraph stations, sewage disposal or storage stations, public libraries, railroad transportation lines or spurs, railroad classification yards, high voltage or high pressure transmission lines, or structures principally used in interstate transmission of electricity, natural gas, or fuel.

- B. Public Utility Services - For the purpose of these regulations, Public Utility Services shall be defined to include, but not be limited to: water, sewage, telephone, electricity, television, natural gas transmission lines and facilities, and public roads and highways.

RECREATIONAL BUILDING, PUBLIC OR NON-PROFIT - Any facility which provides recreational activities for use by the general public including, but not limited to, non-profit or public buildings, such as libraries, museums, art galleries, etc.

RECREATIONAL FACILITY - Any facility which provides recreational activities for use by the general public including, but not limited to, parks, playgrounds, picnic areas, etc.

RECREATIONAL VEHICLE - A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, fifth-wheel camper, and motor home. See Idaho Code 39-4105, Definitions, Subpart (15), for further definition.

RECREATIONAL VEHICLE PARK - A parcel of land upon which three (3) or more recreational vehicle sites are located, established, or maintained for occupancy by recreational vehicles, or tents, as temporary living quarters for recreation, camping, or vacation purposes.

RIGHT-OF-WAY, PRIVATE - A strip of land reserved for use as a private roadway for one (1) or more parcels of land, which normally includes a private street and may incorporate private utilities or service areas.

RIGHT-OF-WAY, PUBLIC - A strip of land publicly dedicated and accepted by a Highway District for use as a roadway. In addition to the roadway, it may also incorporate curbs, utilities, lawn strips, sidewalks, parking lanes, lighting and drainage facilities and may include special features such as grade separation, landscaped areas, viaducts and bridges. The term public right-of-way shall also include public easements acquired by prescription.

ROAD FRONTAGE - The frontage that abuts onto a publicly dedicated and maintained road.

ROAD OR STREET, PUBLICLY DEDICATED AND MAINTAINED - That portion of a public right-of-way prescriptive easement which is improved, dedicated, and maintained by a local Highway District and intended for use by vehicles to provide traffic circulation and primary access to abutting properties.

RUNWAY - A defined rectangular area on an airport prepared for the landing and takeoff of aircraft.

SETBACK LINE - A line established by these regulations or by other ordinances to govern the placement of buildings or other structures with respect to lot lines, streets, taxi-ways, or flanking roadways.

SIGN - A name identification, description, display, or illustration which directs attention to an object, product, place, activity, institution,

organization, or business. For the purposes of this Ordinance, signs shall not include:

- A. Official notices issued by any Court or public agency.
- B. Notices posted by any Public Officer in performance of a public duty or by any person in giving legal notice.
- C. Directional, warning, or informational structures required by or authorized by law or by Federal, State, County, or City authority.

SIGN, GROSS AREA OF - The entire area within a continuous perimeter enclosing the extreme limits of such a sign, however, such perimeter shall not include any structural elements which lie outside the limits of such sign and which do not form an integral part of the display.

SIGN, ON-PREMISE - A free-standing sign exceeding eight (8) feet in height and/or a gross area of thirty-two (32) square feet and which is located on the same property as the business, activity, object, etc.

SOUND LEVEL METER - An instrument standardized by the American Standards Association for measurement of intensity of sound.

STORY - That portion of a building included between the surface of any floor and the surface of the floor next above, or if there is no floor above, the space between the floor and the ceiling next above. A basement shall be counted as a story for the purpose of this Ordinance when more than one half (1/2) of such basement height is above the established curb level or above the finished lot grade level where curb level has not been established.

STREET - A public right-of-way which affords a primary means of access to abutting property.

STRUCTURAL ALTERATION - Any change, other than incidental repairs, which would prolong the life of the supporting members of a building, such as bearing walls, columns, beams, or girders.

STRUCTURE - That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

SURFACE MINE - An area where minerals are extracted by removing the overburden above and adjacent to natural deposits of minerals, and mining the deposits thereby exposed.

SURFACE MINING - Activities performed on a surface mine in the process of extracting minerals from the ground, including the excavation of pits, removal of materials, disposal of overburden, and the construction of haulage roads. Extraction of rock or fill material, or the processing of rock or other road materials, by a Kootenai County highway district shall not be considered surface mining activity for purposes of this Ordinance when the activity is carried on within a public right-of-way, or immediately adjoining property during temporary construction activity associated with publicly maintained roadways.

TAXIWAY - A defined path, from one part of an airport to another, selected or prepared for the taxiing of aircraft.

TEMPORARY HARDSHIP USE - A temporary use which is used as living quarters for a dependent relative when the temporary use is located on the same parcel as the dwelling of the owner of the property, and when the temporary use is accessory to the dwelling of the owner of the property and shall not be considered as a use to be transferred when the owner's property is sold or leased.

TOP SOIL - The darker colored, more friable upper position of the soil, down to such restrictions as claypans, hardpans, coarse sand and gravel, or rock.

TOXIC MATERIALS - Materials which are capable of causing injury to living organisms by chemical means when present in relatively small amounts.

TREE - A woody perennial plant, typically large and with a single, well-defined stem.

USE - The purpose or activity for which the land, or building thereon, is designed or intended, or for which is occupied or maintained, and shall include any manner or performance of such activity with respect to the performance standards of this Ordinance.

USES, PROHIBITED - Those uses not specifically enumerated as permitted uses. Prohibited uses are listed in this Ordinance for purposes of clarity and emphasis only. Prohibited uses mentioned include, but are not limited to, enumerated prohibited uses.

VARIANCE - As defined by Idaho Code, Section 67-6516, "A variance is a modification of the requirements of the Ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other Ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest."

YARD - An open space other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this Ordinance.

YARD, FRONT - A yard extending along the full length of the front lot line between the side lot lines.

YARD, REAR - A yard extending along the full length of the rear lot line between the side lot lines.

YARD, SIDE - A yard extending along a side lot line from the front yard to the rear yard.

ZONE OR DISTRICT - The words "Zone" and "District" are interchangeable in this Ordinance. "Zone" or "District" means all land or water areas within a stated boundary.

ARTICLE 3
ESTABLISHMENT OF ZONES
PROVISIONS FOR OFFICIAL ZONING DISTRICT MAP

SECTION 3.01 OFFICIAL ZONING DISTRICT MAP

The County is hereby divided into zones, as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be part of this Ordinance.

The Official Zoning Map shall be identified by the signature of the Chairman of the Board, attested by the County Clerk:

"This is to verify that this is the Official Zoning District Map referred to in Article 3 of Ordinance No. 11 of Kootenai County, Idaho."

Changes in boundaries of zones shall be made by ordinance after duly-noticed public hearing as prescribed by Idaho Code and Article 27 of this Ordinance. Upon adoption and publication of such amendment ordinance, said changes shall be made on the Official Zoning Map of Kootenai County, along with a notation of the date, file number(s), and initials of the person making the changes.

Regardless of the existence of purported copies of the Official Zoning District Map which may from time to time be made or published, the Official Zoning District Map, which shall be located in the Office of the County Planning and Zoning Department, shall be final authority as to the current zoning status of land and water areas, buildings, and other structures in the County.

SECTION 3.02 REPLACEMENT OF OFFICIAL ZONING DISTRICT MAP

In the event that the Official Zoning District Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature of number of changes and additions, the Board may, by ordinance, adopt a new Official Zoning Map which shall supersede the prior Official Zoning District Map. The new Official Zoning District Map may correct drafting or other errors or omissions in the prior Official Zoning District Map, but no such correction shall have the effect of amending the original Official Zoning District Map or any subsequent amendment thereof. The new Official Zoning District Map shall be identified by the signature of the Chairman of the Board, and attested by the County Clerk:

"This is to verify that this Official Zoning District Map supersedes and replaces the Official Zoning District Map adopted (date of Adoption of map being replaced) as part of Ordinance No. 11 of Kootenai County, Idaho."

Unless the prior Official Zoning District Map has been lost, or has been totally destroyed, the prior Map or any significant parts thereof remaining, shall be preserved, together with all available records pertaining to its adoption or amendment.

ARTICLE 4

SECTION 4.00 RULES AND INTERPRETATION OF ZONE BOUNDARIES

Where uncertainty exists as to the boundaries of zone, as shown on the Official Zoning District Map, the following rules shall apply:

- A. Boundaries indicated as approximately following the centerline of streets, highways, or alleys shall be construed to follow such centerlines;
- B. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
- C. Boundaries indicated as approximately following city limits shall be construed as following such city limits;
- D. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
- E. Boundaries indicated as following shorelines shall be construed to follow such shorelines and legally established meander lines. In the event of change in the shoreline, it shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerlines;
- F. Boundaries indicated as parallel to or extensions of features indicated in Subsections "A" through "E" above, shall be so construed. Distances not specifically indicated on the Official Zoning District Map shall be determined by the scale of the Map;
- G. Boundaries indicated as following Section or Township lines shall be construed as following such Section or Township lines;
- H. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning District Map, or in other circumstances not covered by subsections "A" through "G" above, the Board of Adjustment/Hearing Examiner shall interpret the zone boundaries.
- I. Where a zone boundary line divides a lot which was in single ownership at the time of passage of this Ordinance, the Board may permit, as a special exception, the extension of the regulations for either portion of the lot not to exceed fifty (50) feet beyond the zone line into the remaining portion of the lot.

ARTICLE 5

SECTION 5.00 APPLICATION OF ZONE REGULATIONS

The regulations set by this Ordinance within each zone shall be minimum regulations and shall apply uniformly to each class or kind of structure or land use.

SECTION 5.02

No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered, except in conformity with all of the regulations herein specified for the zone in which it is located.

SECTION 5.02

No building or other structure shall hereafter be erected or altered:

- A. To exceed the height regulations;
- B. To accommodate or house a greater number of families;
- C. To occupy a greater percentage of lot area;
- D. To have narrower or smaller rear yards, front yards, side yards, or other open space than herein required; or in any other manner contrary to the provisions of this Ordinance.

SECTION 5.03

No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Ordinance shall be included as part of a yard, open space, or off-street parking, or loading space similarly required for any other building.

SECTION 5.04

No yard or lot existing at the time of the passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements.

ARTICLE 6
AGRICULTURAL ZONE (A)

SECTIONS:

- 6.00 AGRICULTURAL ZONE
- 6.01 RESTRICTIONS
- 6.02 SITE AREA
- 6.03 EXISTING CEMETERIES
- 6.04 USE PERMITTED EXISTING PROPERTY OF LESS THAN 8,250 SQUARE FEET
- 6.05 USES PERMITTED EXISTING PROPERTY OF 8,250 SQUARE FEET
- 6.06 USES PERMITTED EXISTING PROPERTY OF 9,900 SQUARE FEET
- 6.07 USES PERMITTED EXISTING PROPERTY OF 15,000 SQUARE FEET
- 6.08 USES PERMITTED 5 ACRES AND 200 FEET FRONTAGE
- 6.09 USES PROHIBITED
- 6.10 FRONT, SIDE, AND REAR YARDS
- 6.11 OFF-STREET PARKING
- 6.12 CONDITIONAL USES

SECTION 6.00 AGRICULTURAL ZONE

The "Agricultural zone" is a land use classification for a district suitable for farming and agricultural pursuits, tree farms, and all uses that come under the title of forestry uses.

SECTION 6.01 RESTRICTIONS

In the Agricultural zone, no building or premises shall be used, nor shall any building or structure hereafter erected or altered (unless provided in this Ordinance), except for one or more of the following uses in accordance with the following standards; provided, however, that those standards shall not be in conflict with Idaho Code 31-3803 which reads in part (a) "Deprives any owner of full and complete use of agricultural land for production of any agricultural product (agricultural land is herein defined as a tract of land containing not less than five (5) acres, including canal and railroad rights-of-way, used exclusively for agricultural purposes)."

SECTION 6.02 SITE AREA

The following site area requirements apply in the Agricultural Zone except that where a lot has less area or frontage than required in this Section as shown by any official plat on file in the office of the County Clerk, or shown by the last conveyance of record, at the time of the passage of this Ordinance; these regulations shall not prohibit one (1) private dwelling and its accessory buildings on such lot, provided sixty-five (65) percent of the area of the site be left in open space free from structure. However, specific additional uses are permitted on existing properties which have site areas as described in Sections 6.04, 6.05, 6.06, and 6.07. After the effective date of this Ordinance, the minimum lot size requirements in the Agricultural zone shall be five (5) acres and two hundred (200) feet of frontage on an existing public street.

SECTION 6.03 EXISTING CEMETERIES

Any existing cemetery shall not be restricted in any manner, except that expansion of existing property shall conform with the laws of Idaho.

SECTION 6.04 USES PERMITTED - EXISTING PROPERTY OF LESS THAN 8250 SQUARE FEET WITH LESS THAN 75 FEET FRONTAGE ON AN EXISTING STREET

With less than eight thousand two hundred fifty (8250) square feet with less than seventy-five (75) feet of continuous frontage on a public street, uses are limited to those which were in existence prior to the effective date of this Ordinance.

SECTION 6.05 USES PERMITTED - EXISTING PROPERTY OF 8,250 SQUARE FEET AND 75 FEET OF FRONTAGE ON EXISTING STREET.

Not less than eight thousand two hundred fifty (8,250) square feet with seventy-five (75) feet of continuous frontage on a public street, the following uses are permitted:

- A. General farming, except the minimum lot area for the keeping of livestock shall be 3/4 acre.
- B. Roadside stands of not more than three hundred (300) square feet used for sale of agricultural products on the premises.
- C. Fish hatcheries or fish farms.
- D. Temporary office for sale of real estate for a period not to exceed two (2) years.
- E. Temporary offices and warehouse of a contractor engaged in the construction of building on a project for a period not to exceed two (2) years.
- F. One single-family dwelling with the usual accessory buildings, such as toolhouses and private garages.
- G. Home occupation as defined in this Ordinance.
- H. Nonprofit parks, playgrounds, recreational facilities.
- I. Bed and Breakfast
 - 1. Maximum of five (5) rooms for lodging of paying guests.
 - 2. Must provide off-street automobile parking space for each guest room, as well as all vehicles owned by permanent residents.
 - 3. Rooms cannot be added for the sole purpose of use as a bed and breakfast facility.
 - 4. Signs shall be limited to four (4) square feet.

5. No other commercial uses are permitted in conjunction, for example: restaurant, meeting hall, etc.

SECTION 6.06 USES PERMITTED - EXISTING PROPERTY OF 9,900 SQUARE FEET AND 90 FEET OF FRONTAGE ON AN EXISTING STREET.

Not less than nine thousand nine hundred (9,900) square feet with not less than ninety (90) feet of continuous frontage on a public street, the following uses are permitted:

- A. Any of the uses listed in Section 6.05.
- B. One two-family dwelling.

SECTION 6.07 USES PERMITTED - EXISTING PROPERTY OF 15,000 SQUARE FEET AND 125 FEET OF FRONTAGE ON AN EXISTING STREET.

Not less than fifteen thousand (15,000) square feet with continuous frontage of not less than one hundred twenty-five (125) feet on a public street, the following uses are permitted:

- A. Any of the uses listed in Sections 6.05 and 6.06.
- B. Churches.
- C. Nonprofit community halls, and lodges, except those, the principal activity of which is service customarily carried on as a business.
- D. Medical and dental clinics.

SECTION 6.08 USES PERMITTED - 5 ACRES AND 200 FEET OF FRONTAGE

On property of not less than five (5) acres and two hundred (200) feet of continuous frontage on a street, when located two hundred (200) feet from any dwelling other than the dwelling of the property owner, the following uses are permitted:

- A. All uses listed in Sections 6.05, 6.06, and 6.07.
- B. Public and private schools.
- C. Hospitals and sanitariums.
- D. Processing plants, feed mills, packing plants, and warehouses for the purpose of processing, packing, and storage of agricultural products, employing regularly not more than ten (10) persons, but excluding meat, poultry, slaughterhouses, and commercial fertilizer manufacturing.
- E. A contractor's maintenance, repair and processing building, and storage yard, when located on the same property with the dwelling in which he resides, providing that any storage area is securely fenced.

- F. Dairy products manufacture.
- G. Cemeteries, provided that they meet all standards of the Idaho Code and approved by the County Health Officer and County Engineer.
- H. Temporary Hardship Use, subject to the standards of Section 25.06.

SECTION 6.09 USES PROHIBITED

Prohibited uses in the Agricultural zone include, but are not limited to, the following:

- A. General commercial uses, except as specifically permitted.
- B. General manufacturing uses, except as specifically permitted.
- C. Subdivisions as defined in the Kootenai County Subdivision Ordinance.
- D. Same as Section 7.08.A.

SECTION 6.10 FRONT, SIDE, AND REAR YARDS

The following front, side, and rear yard requirements shall apply in the Agricultural zone:

A. Residential Structures:

- 1. Front Yard25 feet
- 2. Side yard.....10 feet
With an alley.....6 feet
- 3. Flanking Street.....15 feet
- 4. Rear yard.....25 feet

B. Accessory buildings:

- 1. Front yard.....25 feet
- 2. Side yard.....10 feet
With an alley.....6 feet
- 3. Rear yard.....15 feet
- 4. Flanking street.....15 feet

C. All other permitted structures:

- 1. Front yard.....30 feet

2. Side yard.....30 feet
3. Rear yard.....30 feet
4. Flanking street.....25 feet

SECTION 6.11 OFF-STREET PARKING FOR VEHICLES IS REQUIRED AS FOLLOWS:

- A. Residence - One (1) off-street parking space for each dwelling.
- B. Churches, Community Halls, Auditoriums, Schools - One (1) off-street parking space for each six (6) seats in main auditorium.
- C. Hospitals, Resthomes, Sanitariums - One (1) off-street parking space for each four (4) beds.

6.12 CONDITIONAL USES

- A. Gun Clubs, Rifle Ranges, and Archery Ranges
- B. Slaughterhouses and Rendering Plant
- C. Golf Course and Driving Range
- D. Commercial Fur Farms
- E. Commercial Resort
- F. Agricultural Products Sales Store
- G. Rental Warehouse
- H. Animal Clinics, Orphanages, Hospitals, Boarding Kennels & Runs or Schools
- I. Auto Wrecking Yards, Junk Yards, Automotive Repair Facility
- J. Sawmills, Shingle or Planing Mill, or Woodworking Plant
- K. Retirement, Convalescent, and Nursing Homes
- L. Radio and Television Towers
- M. Airports and Landing Fields
- N. Outdoor Advertising Structures
- O. Race Tracks
- P. Feed Lots
- Q. Group Housing

- R. Private Resort (Nonprofit)
- S. Outdoor Theaters
- T. Public Utility Complex Facility
- U. Wholesale Greenhouses
- V. Restricted Surface Mining
- W. Day Care Center

ARTICLE 7
AGRICULTURAL SUBURBAN ZONE (AS)

SECTIONS:

- 7.00 AGRICULTURAL SUBURBAN ZONE
- 7.01 RESTRICTIONS
- 7.02 SITE AREA
- 7.03 USES PERMITTED - PROPERTY OF 8,250 SQUARE FEET
- 7.04 USES PERMITTED - 9,900 SQUARE FEET
- 7.05 USES PERMITTED - 15,000 SQUARE FEET
- 7.06 USES PERMITTED - 4 1/2 ACRES
- 7.07 USES PERMITTED - STORAGE
- 7.08 USES PROHIBITED
- 7.09 FRONT, SIDE, AND REAR YARDS
- 7.10 OFF-STREET PARKING
- 7.11 CONDITIONAL USES

SECTION 7.00 AGRICULTURAL SUBURBAN ZONE

The "Agricultural Suburban zone" is a land use classification for a district suitable for residential and agricultural uses.

SECTION 7.01 RESTRICTIONS

In the Agricultural Suburban zone, no building or premises shall be used, nor shall any building or structure hereafter be erected or altered (unless provided in this Ordinance) except for one (1) or more of the following used in accordance with the following standards.

SECTION 7.02 SITE AREA

The following site area requirements apply in the Agricultural Suburban zone, except that where a lot has less area or frontage than required in this Article as shown by an official plat on file in the office of the County Clerk, or shown by the last conveyance of record at the time of the passage of this Ordinance; these regulations shall not prohibit one (1) private dwelling and its accessory buildings on such lot, provided sixty-five (65) percent of the area of the site be left in open space free from structures.

SECTION 7.03 USES PERMITTED - PROPERTY OF 8,250 SQUARE FEET AND 75 FEET OF FRONTAGE.

On property of not less than eight thousand two hundred fifty (8,250) square feet with seventy-five (75) feet of continuous frontage on a public street, the following uses are permitted:

- A. General farming, except the minimum lot area for the keeping of livestock shall be 3/4 acre.
- B. Temporary office for the sale of real estate for a period not to exceed two (2) years.

- C. Temporary structure of a contractor engaged in the construction of buildings on a project for a period not to exceed two (2) years.
- D. Existing cemeteries.
- E. One (1) single-family dwelling and the usual accessory buildings.
- F. Home occupations as defined in this Ordinance.
- G. Subdivisions as defined in the Kootenai County Subdivision Ordinance.
- H. Temporary Hardship Use, subject to the standards of Section 25.06.
- I. Bed and Breakfast
 - 1. Maximum of five (5) rooms for lodging of paying guests.
 - 2. Must provide off-street automobile parking space for each guest room, as well as all vehicles owned by permanent residents.
 - 3. Rooms cannot be added for the sole purpose of use as a bed and breakfast facility.
 - 4. Signs shall be limited to four (4) square feet.
 - 5. No other commercial uses are permitted in conjunction, for example: restaurant, meeting hall, etc.
- J. Nonprofit parks, playgrounds, and recreational facilities.

SECTION 7.04 USES PERMITTED - 9,900 SQUARE FEET AND 90 FEET OF FRONTAGE

On property of not less than nine thousand nine hundred (9,900) square feet with not less than ninety (90) feet of continuous frontage on a public street, the following uses are permitted:

- A. Any of the uses listed in Section 7.03.
- B. One (1) two-family dwelling.

SECTION 7.05 USES PERMITTED - 15,000 SQUARE FEET AND 125 FEET OF FRONTAGE

On all property of not less than fifteen thousand (15,000) square feet with continuous frontage of not less than one hundred twenty-five (125) feet on a public street, the following uses are permitted.

- A. Any of the uses listed in Section 7.04.
- B. Churches.
- C. Non-profit community halls and lodges, except those, the principal activity of which is service customarily carried on as a business.
- D. Medical and dental clinics.

- E. One (1) multiple-family dwelling.

SECTION 7.06 USES PERMITTED - 4 1/2 ACRES AND 200 FEET FRONTAGE

On property of not less than four and one-half (4 1/2) acres and with two hundred (200) feet of continuous frontage on a public street, the following uses are permitted:

- A. All uses listed in Section 7.05.
- B. Public and private schools.
- C. Hospitals and sanitariums.

SECTION 7.07 USES PERMITTED - STORAGE

No property in the Agricultural Suburban zone shall be used as a storage area for any purpose other than storage of material used in connection with the operation of household and agricultural activities associated with the normal operation of the above uses, except that property may be used for the storage of materials used in the construction of the individual buildings on the property.

SECTION 7.08 USES PROHIBITED

Prohibited uses in the Agricultural Suburban zone include, but are not limited to, the following:

- A. Outdoor advertising display, signs, or structures, except a sign identifying home occupation, or a sign indicating proposed sale or rental of the property on which the sign is located.
- B. Commercial uses.
- C. Manufacturing uses.

SECTION 7.09 FRONT, SIDE, AND REAR YARDS

The following front, side, and rear yard requirements shall apply in the Agricultural Suburban zone:

- A. Residential structures:
 - 1. Front yard.....25 feet
 - 2. Side yard.....10 feet
With an alley.....6 feet
 - 3. Flanking street.....15 feet
 - 4. Rear yard.....25 feet
- B. Accessory buildings:
 - 1. Front yard.....25 feet

2. Side yard.....10 feet
With an alley.....6 feet
 3. Rear yard.....15 feet
 4. Flanking street.....15 feet
- C. All other permitted structures:
1. Front yard.....30 feet
 2. Side yard.....30 feet
 3. Rear yard.....30 feet
 4. Flanking street.....25 feet

SECTION 7.10 OFF-STREET PARKING FOR VEHICLES IS REQUIRED AS FOLLOWS:

- A. Residence - One (1) off-street parking space for each dwelling.
- B. Churches, Community Halls, Auditoriums, Schools - One (1) off-street parking space for each six (6) seats in main auditorium.
- C. Hospitals, Resthomes, Sanitariums - One (1) off-street parking space for each four (4) beds.

SECTION 7.11 CONDITIONAL USES

- A. Golf Courses and Driving Ranges.
- B. Commercial Resort.
- C. Manufactured Homes as a Residence on Less Than 5 Acres.
- D. Retirement, Convalescent, and Nursing Homes.
- E. Group Housing.
- F. Private Resort (non-profit).
- G. Outdoor Theaters.
- H. Tennis Courts, Racquet Clubs, Softball Fields, Baseball Fields, and Soccer Fields.
- I. Public Utility Complex Facility.
- J. Wholesale Greenhouses.
- K. Day Care Center.
- L. Radio and Television Towers.
- M. Gun Clubs, Rifle Ranges, and Archery Ranges

ARTICLE 8
RESTRICTED RESIDENTIAL ZONE (RR)

SECTIONS:

- 8.00 RESTRICTED RESIDENTIAL ZONE
- 8.01 RESTRICTIONS
- 8.02 SITE AREA
- 8.03 USES PERMITTED - PROPERTY OF 8,250 SQUARE FEET
- 8.04 USES PERMITTED - 9,900 SQUARE FEET
- 8.05 USES PERMITTED - 15,000 SQUARE FEET
- 8.06 USES PROHIBITED
- 8.07 FRONT, SIDE, AND REAR YARDS
- 8.08 OFF-STREET PARKING
- 8.09 CONDITIONAL USES

SECTION 8.00 RESTRICTED RESIDENTIAL ZONE

The "Restricted Residential zone" is a land use classification for a district suitable for residential use which is, or will become, a one- or two-family unit living area. Uses are limited to residential uses.

SECTION 8.01 RESTRICTIONS

In the Restricted Residential zone, no building or premises shall be used nor shall any building or structure hereafter be erected or altered (unless provided in this Ordinance) except for one (1) or more of the following uses in accordance with the following standards.

SECTION 8.02 SITE AREA

The following site area requirements apply to the Restricted Residential zone, except that where a lot has less area or frontage than required in this Article as shown by an official plat on file in the Office of the County Clerk or shown by the last conveyance of record at the time of the passage of this Ordinance; these regulations shall not prohibit one (1) private dwelling and its accessory buildings on such lot, provided sixty-five (65) percent of the area of the site be left in open space free from structures.

SECTION 8.03 USES PERMITTED - PROPERTY OF 8,250 SQUARE FEET AND 75 FEET OF FRONTAGE

On property of not less than eight thousand two hundred fifty (8,250) square feet with seventy-five (75) feet of continuous frontage on a public street, the following uses are permitted:

- A. One (1) single-family dwelling with the usual accessory buildings, such as toolhouses and private garages.
- B. Home occupations as defined in this Ordinance.
- C. Non-profit parks, playgrounds, recreational facilities.
- D. Subdivisions as defined in the Kootenai County Subdivision Ordinance.

E. Temporary Hardship Use, subject to the standards of Section 25.06.

F. Bed and Breakfast

1. Maximum of five (5) rooms for lodging of paying guests.
2. Must provide off-street automobile parking space for each guest room as well as all vehicles owned by permanent residents.
3. Rooms cannot be added for the sole purpose of use as a bed and breakfast facility.
4. Signs shall be limited to four (4) square feet.
5. No other commercial uses are permitted in conjunction, for example: restaurant, meeting hall, etc.

SECTION 8.04 USES PERMITTED - 9,900 SQUARE FEET AND 90 FEET OF FRONTAGE

On property of not less than nine thousand nine hundred (9,900) square feet with not less than ninety (90) feet of continuous frontage on a public street, the following uses are permitted:

- A. Any of the uses listed in Section 8.03.
- B. One (1) two-family dwelling.

SECTION 8.05 USES PERMITTED - 15,000 SQUARE FEET AND 125 FEET FRONTAGE

On all property of not less than fifteen thousand (15,000) square feet with continuous frontage of not less than one hundred twenty-five (125) feet on a public street, the following uses are permitted:

- A. Any of the uses listed in Section 8.04.
- B. Churches.
- C. Manufactured Homes are permitted on five (5) acres or more.

SECTION 8.06 USES PROHIBITED

Prohibited uses in the Restricted Residential Zone, include, but are not limited to the following:

- A. General Commercial uses.
- B. General Manufacturing uses.
- C. Same as 7.08.A.

SECTION 8.07 FRONT, SIDE, AND REAR YARDS

The following front, side, and rear yard requirements shall apply for all permitted structures in the Restricted Residential zone:

- A. Front yard.....25 feet
- B. Side yard.....10 feet
With an alley..... 6 feet
- C. Flanking street.....15 feet
- D. Rear yard.....25 feet

SECTION 8.08 OFF-STREET PARKING FOR VEHICLES IS REQUIRED AS FOLLOWS:

- A. Residence - One (1) off-street parking space for each dwelling.
- B. Churches, Community Halls, Auditoriums - One (1) off-street parking space for each six (6) seats in the main auditorium.

SECTION 8.09 CONDITIONAL USES

- A. Golf Courses and Driving Ranges.
- B. Commercial Resort.
- C. Manufactured Home as a Residence on Less Than 5 Acres.
- D. Private Resort (non-profit).
- E. Public Utility Complex Facility.
- F. Retirement, Convalescent, and Nursing Homes.
- G. Day Care Center

ARTICLE 9
COMMERCIAL ZONE (C)

SECTIONS:

- 9.00 COMMERCIAL ZONE
- 9.01 RESTRICTIONS
- 9.02 SITE AREAS
- 9.03 PARKING REQUIREMENTS - GENERAL
- 9.04 PARKING REQUIREMENTS - SPECIFIC
- 9.05 USES PERMITTED
- 9.06 USES PERMITTED - 12,000 SQUARE FEET
- 9.07 FRONT, SIDE, AND REAR YARDS
- 9.08 USES PERMITTED - STORAGE
- 9.09 USES PROHIBITED
- 9.10 CONDITIONAL USES
- 9.11 RECREATIONAL VEHICLE PARK PERFORMANCE STANDARDS

SECTION 9.00 COMMERCIAL ZONE

The "Commercial zone" is a land use classification for a district suitable for wholesale and retail sales and services.

SECTION 9.01 RESTRICTIONS

In the Commercial zone no building or premises shall be used, nor any building or structure be hereafter erected or altered, unless otherwise provided in this Ordinance, except for one (1) or more of the following uses in accordance with the following standards.

SECTION 9.02 SITE AREAS

Sixty-five (65) percent of the area of all sites must be left in open spaces free from structures.

SECTION 9.03 PARKING REQUIREMENTS - GENERAL

A detailed plan of proposed use of land and/or structures shall be presented to the Administrator demonstrating how parking of automobiles and/or trucks is to be resolved. Parking facilities shall not cause congestion of adjacent streets or alleyways.

SECTION 9.04 PARKING REQUIREMENTS - SPECIFIC

- A. Any retail or service establishment shall provide one (1) parking space for each two hundred (200) square feet of gross floor space.
- B. Restaurants, taverns, and any establishment for the sale and consumption on the premises of food, refreshments, or beverages, shall provide one (1) parking space for each one hundred (100) square feet of gross floor area of the buildings.
- C. Theaters shall provide one (1) parking space for each four (4) fixed theater seats.
- D. Bowling alleys shall provide five (5) parking spaces for each alley.

- E. Motels and motor hotels shall provide one (1) parking space for each unit.

SECTION 9.05 USES PERMITTED

On property of whatever size, the following uses are permitted:

- A. Parks, playgrounds, and golf courses.
- B. Community facilities, including fire stations, public utility installations, etc.
- C. Public or non-profit recreational buildings.
- D. Any retail or service business.
- E. Public or private office buildings.
- F. Any eating or drinking establishment.
- G. Any service type business, such as photographic studios, barber and beauty shops, printing and publishing shops, household equipment repair, auto and truck repair, etc.
- H. Transfer, storage, and warehouse facilities, except outside storage must be within a sight-obscuring fence.
- I. One (1) single-family dwelling, or one (1) two-family dwelling, or two (2) single-family dwellings.
- J. Recreational vehicle park.
- K. Signs, as defined by this Ordinance, affixed to or represented directly upon a building.
- L. General farming, except the minimum lot area for the keeping of livestock shall be 3/4 acre.
- M. Vocational, trade, or private instructional schools, providing a specialized or single-item curriculum.

SECTION 9.06 USES PERMITTED - 12,000 SQUARE FEET AND 90 FEET FRONTAGE

On property of not less than twelve thousand (12,000) square feet and not less than ninety (90) feet of continuous frontage on a public street, the following uses are permitted:

- A. Any use enumerated in Section 9.05.
- B. Hotels and motels, provided each dwelling unit shall have one (1) off-street parking space.
- C. On-premise signs.

SECTION 9.07 FRONT, SIDE, AND REAR YARDS

The following front, side, and rear yard setback requirements shall apply in the Commercial zone.

All Buildings:

- A. Front yard.....35 feet
- B. Side yard.....none
- C. Flanking street.....20 feet
- D. Rear yard.....15 feet

SECTION 9.08 USES PERMITTED - STORAGE

No premises in the Commercial zone shall be used as a storage area for any purpose other than storage of materials required in connection with the enumerated permitted uses in the Commercial zone. All storage must be indoors, or within a six (6) foot sight-obscuring fence, or screened with vegetative materials, so that the storage area cannot be seen by adjacent properties and the travelling public.

Storage areas must conform to the minimum setback regulations of the zone. Automobiles and other machinery normally displayed for sales purposes on an open lot may be so displayed.

SECTION 9.09 USES PROHIBITED

- A. Auto wrecking and junk yards.
- B. Processing and manufacturing are prohibited, unless they are part of the operation of a business or service specifically permitted in the Commercial zone.

SECTION 9.10 CONDITIONAL USES

- A. Outdoor Theaters.
- B. Outdoor Advertising Structures.
- C. Public Utility Complex Facility.

SECTION 9.11 RECREATIONAL VEHICLE PARK PERFORMANCE STANDARDS

- A. Intent - The intent of these standards is for temporary living quarters and not permanent or year-round housing.
- B. Accessory Uses - Management headquarters, recreational facilities, toilets, dumping stations, coin-operated laundry facilities, and other convenience establishments are permitted as accessory uses incidental to the operation of the recreational vehicle park.
- C. Recreational vehicles shall be separated from each other and from other structures by at least ten (10) feet. Any accessory structures, such as

attached awnings or carports, shall, for the purpose of this separation requirement, be considered to be part of the recreational vehicle.

- D. Each recreational vehicle lot/space shall contain a stabilized vehicular parking pad composed of paving, compacted crushed gravel, or other all-weather material.
- E. Interior drives in recreational vehicle parks which enter and exit onto a public road must be approved by the applicable Highway District or the Idaho Transportation Department.
- F. Yards, fences, walls, or vegetative screening shall be provided at the property lines of a recreational vehicle park where the park adjoins adjacent lands that are zoned or used for residential purposes. In particular, extensive off-street parking areas and service areas for loading and unloading purposes other than for passenger uses and areas for storage and collection of refuse shall be screened.
- G. If it is determined by the applicable Highway District or Idaho Transportation Department that traffic control devices or other traffic regulation improvements are required as a result of development of a recreational vehicle park, the Sponsor shall be responsible for the cost of installation or construction of said improvements.
- H. Internal roads and parking service areas shall provide safe and convenient access for service and emergency vehicles and to amenities within the recreational vehicle park. Internal roads shall not be designed to encourage use by outside traffic to traverse the recreational vehicle park to adjoining developed areas.
- I. Each recreational vehicle lot shall have one (1) off-street vehicle parking space.
- J. Any action toward removal of wheels of a recreational vehicle, except for temporary purposes of repair or to attach the recreational vehicle to the grounds for stabilizing purposes is prohibited.
- K. Occupancy of a recreational vehicle park space by a particular recreational vehicle shall be limited each year to only those days between Memorial Day and October 1, and/or a maximum of thirty (30) consecutive days during the remaining months of the calendar year.
- L. A site plan shall be submitted upon application for a building permit with a North arrow and date of drawing, showing uses and structures which are proposed. Said plan shall include adequate information to clearly depict existing and proposed structures and their uses, existing and proposed roads, easements, points of access, recreational vehicle lot dimensions, number of acres in site, dimensions of property lines, property line setbacks, reserved or dedicated open space, major landscape features (both natural and man-made), locations of existing and proposed utility lines, accessory off-street parking and loading facilities, parking space areas, wastewater drainfield area, traffic circulation patterns, refuse and service areas, signs, outdoor storage, and fences, yards, or wall or vegetative screening.

ARTICLE 10
LIGHT INDUSTRIAL ZONE (II)

SECTIONS:

- 10.00 LIGHT INDUSTRIAL ZONE
- 10.01 RESTRICTIONS
- 10.02 USES PERMITTED - AGRICULTURAL AND COMMERCIAL
- 10.03 USES PERMITTED - LIGHT INDUSTRIAL
- 10.04 USES PERMITTED - STORAGE
- 10.05 USES PROHIBITED
- 10.06 FRONT, SIDE, AND REAR YARD SETBACKS
- 10.07 BUILDING LINE VARIATIONS
- 10.08 BUILDING HEIGHT
- 10.09 PARKING AND LOADING REQUIREMENTS
- 10.10 CONDITIONAL USES

SECTION 10.00 LIGHT INDUSTRIAL ZONE

The "Light Industrial zone" is a land use classification for a district suitable for manufacturing and processing of a non-nuisance character. The purpose of the Light Industrial zone is to encourage the development of manufacturing and wholesale business that is clean, quiet, and free of noise, odor, dust, and smoke.

SECTION 10.01 RESTRICTIONS

In the Light Industrial zone, no building or premises shall be used nor any building or structure be hereafter erected, altered, or occupied except in compliance with all provisions of this Ordinance.

SECTION 10.02 USES PERMITTED - AGRICULTURAL AND COMMERCIAL

On any property of whatever size with frontage on a public street, the following uses are permitted, subject to all provisions of this Article:

- A. General Farming, except the minimum lot area for the keeping of livestock shall be 3/4 acre.
- B. Public Parks.
- C. Uses Permitted in Section 9.05 and 9.06.
- D. Outdoor Advertising Structures.

SECTION 10.03 USES PERMITTED - LIGHT INDUSTRIAL

On property of not less than fifteen thousand (15,000) square feet with continuous frontage of not less than one hundred (100) feet on a public street, all uses permitted in the Light Industrial zone shall:

- A. Be carried on in such a manner and with such precautions against fire and explosion hazards as provided by the Uniform Building Code.

- B. Screen or store all raw materials, finished products, machinery, and equipment, including company-owned or operated trucks, within a building, a fence, or vegetative barrier as required by this Article.
- C. Emit no obnoxious odors of any kind.
- D. Exhaust no waste or dust created by business operation into the air.
- E. Discharge no treated or untreated sewage or waste into any reservoir or lake. Discharge and disposal of untreated sewage or industrial waste shall comply with the standards approved by the State Department of Health.
- F. Be conducted so that direct and indirect illumination shall not exceed 0.2 foot candle across lot lines of the subject property.
- G. Conduct no mining, extraction, filling, or soil-stripping operations.
- H. Use only oil, gas, or electricity as industrial fuel.
- I. Not emit noise causing sound pressure levels greater than those listed in Section 11.09.

SECTION 10.04 USES PERMITTED - STORAGE

On any property of whatever size with frontage on a public street the following uses are permitted:

- A. Storage of materials and machinery - All storage must be indoors, or within a six (6) foot sight-obscuring fence, or screened with vegetative materials, so that the storage area cannot be seen by adjacent properties and the travelling public. Storage areas must conform to the minimum setback regulations of the zone. Automobiles and other machinery normally displayed for sales purposes on an open lot may be so displayed.
- B. Storage of below-ground petroleum products - Storage of petroleum products in quantities of less than twenty thousand (20,000) gallons (total for each site) shall be below ground and shall meet National Fire Protection Association Standards.

SECTION 10.05 USES PROHIBITED

Prohibited uses in the Light Industrial zone include, but are not limited to, the following:

- A. General Residential Uses.
- B. Public and private schools, general hospitals, sanatoriums, churches, and cemeteries.
- C. Stockyards, soap manufacture, glue manufacture, tannery, paper manufacture, wool scouring and cleaning, cotton textile sizing, scouring, leaching, dyeing, and similar uses; varnish manufacture; creosote; and products manufacture.

- D. The production of corrosive and noxious chemicals, including, but not limited to, acids, acetylene gas, ammonia, chlorine, and bleaching compounds.
- E. The production and process of coal and coal tar, the processing of petroleum and petroleum products, petroleum refining, and the above-ground storage of less than twenty thousand (20,000) gallons (per site) of petroleum products.
- F. The extraction, preparation, and processing of dust-producing mineral products including, but not limited to, abrasive, cement, lime, fertilizer, plaster, crushed stone, mining of sand, gravel, topsoil.
- G. The smelting and reduction of metallic ores including, but not limited to, blast furnaces, open hearth, and electric furnaces, bessemer converters, and non-ferrous metal smelters.
- H. The manufacture and storage of explosive products, including, but not limited to, dynamite, commercial explosives, T.N.T., military explosives, and fireworks.

SECTION 10.06 FRONT, SIDE, AND REAR YARD SETBACKS

A. Public and Semi-Public Uses:

- 1. Front Yard.....35 feet
- 2. Side Yard.....No requirement, except when the use abuts any Residential zone; then the side yard shall be five (5) feet for each story of the building.
- 3. Flanking Street.....20 feet
- 4. Rear Yard.....35 feet

B. Commercial and Industrial Buildings:

- 1. Front Yard.....35 feet
- 2. Side Yard.....No requirement except when a commercial or industrial building abuts any Residential zone then the side yard shall be five (5) feet for each story of the building.
- 3. Flanking Street.....20 feet
- 4. Rear Yard.....15 feet

SECTION 10.07 BUILDING LINE VARIATIONS

Where there is an established building line in a Light Industrial zone, a commercial or industrial building may be built on the established building line. The established building line shall be determined by sixty-five (65) percent of the existing buildings within two hundred (200) feet from each side of the lot.

SECTION 10.08 BUILDING HEIGHT

No building hereafter created or structurally altered in a Light Industrial zone shall exceed three (3) stories or a maximum height of thirty-five (35) feet.

SECTION 10.09 PARKING AND LOADING REQUIREMENTS

A detailed plan of proposed use of land and/or structures shall be presented to the Administrator demonstrating how parking of automobiles and/or trucks is to be resolved. Parking facilities shall not cause congestion of adjacent streets or alleyways.

A. Standards - General:

1. Parking spaces of commercial, industrial or institutional uses shall be located not more than five hundred (500) feet from the principal use.
2. Design and location of entrances and exits for required off-street parking and loading areas shall be subject to review by the Planning Commission.

B. Parking Space Requirements - Specific:

1. Light Industrial users shall provide one (1) space for each one thousand (1,000) square feet of gross floor area, or two (2) spaces for each three (3) employees, whichever requirement is the greater.
2. Commercial users shall provide one (1) parking space for each two hundred (200) square feet of gross floor space.

C. Loading Space Requirements - Specific:

1. Convenient access to loading spaces from streets or alleys shall be provided; they shall not be less than twelve (12) feet in width.
2. Off-street loading facilities shall not project into the public right-of-way or setback area. In no case shall the required off-street loading berths be part of the area used to satisfy the off-street parking requirements.

SECTION 10.10 CONDITIONAL USES

- A. Slaughterhouse and Rendering Plant.
- B. Auto Wrecking Yard, Junk Yard.
- C. Above-Ground Bulk Storage of Over Twenty Thousand (20,000) Gallons (per site) of Petroleum Products.
- D. Public Utility Complex Facility.

ARTICLE 11
INDUSTRIAL ZONE (I)

SECTIONS:

- 11.00 INDUSTRIAL ZONE
- 11.01 RESTRICTIONS
- 11.02 SITE AREA
- 11.03 USES PERMITTED - GENERAL
- 11.04 SMOKE AND PARTICULATE MATTER
- 11.05 ODOROUS MATTER
- 11.06 TOXIC MATTER
- 11.07 RADIOACTIVE MATERIALS
- 11.08 EXPLOSIVE AND FLAMMABLE MATERIALS
- 11.09 NOISE
- 11.10 VIBRATION
- 11.11 GLARE
- 11.12 WASTES AND SURFACE DRAINAGE
- 11.13 PROPERTY CONTROL
- 11.14 CONDITIONAL USES

SECTION 11.00 INDUSTRIAL ZONE

The "Industrial zone" is a land use classification for a district suitable for manufacturing and processing of all types.

SECTION 11.01 RESTRICTIONS

In the Industrial zone, no building or premises shall be used nor shall any building or structure be hereafter erected or altered unless otherwise provided in this Title, except for one or more of the following uses in accordance with the following standards.

SECTION 11.02 SITE AREA

Twenty (20) percent of the area of the site must be left in open space free from structure.

SECTION 11.03 USES PERMITTED - GENERAL

Any trade, industry, or processing facility of any type, provided the performance standards of this Title are met and in addition, all applicable legislation and official regulation promulgated by a public agency having jurisdiction.

SECTION 11.04 SMOKE AND PARTICULATE MATTER

Emissions of dustfall, smoke, and suspended matter shall meet the requirements of the State of Idaho Air Pollution Control Commission.

SECTION 11.05 ODOROUS MATTER

Odorous matter is defined as any material, gaseous, liquid, or solid, that produces a response in the normal human nose. The release of odorous material

from any plant shall be controlled so as not to become a nuisance or source of unreasonable discomfort at any point beyond the plant property line.

SECTION 11.06 TOXIC MATTER

The discharge of toxic matters shall meet the requirements of the State of Idaho Air Pollution Control Commission.

SECTION 11.07 RADIOACTIVE MATERIALS

The manufacture, utilization, and storage of radioactive materials shall comply with the regulations established by the Atomic Energy Commission, the Idaho Department of Health, and other authorities having jurisdiction.

SECTION 11.08 EXPLOSIVE AND FLAMMABLE MATERIALS

- A. The manufacture, transportation, storage, and use of materials or products which decompose by detonation shall be conducted in accordance with the National Fire Protection Association Standard No. 495, "Code for Manufacture, Transportation, Storage and Use of Explosives and Blasting Agents," and the rules and regulations governing explosives promulgated by the State of Idaho and other authorities having jurisdiction. Explosive materials not covered by these standards and regulations shall be manufactured, stored, or utilized no closer than one hundred (100) feet from a plant property line or two hundred (200) feet from the boundary line separating it from a residential or commercial area.
- B. The manufacture, transportation, utilization, and storage of flammable materials shall be conducted in accordance with accepted standards for safety and fire prevention. Such standards shall include the National Fire Codes, and the appropriate standards of the American Petroleum Institute, the Manufacturing Chemists' Association, and other organizations that promulgate standards of good practice. The storage, utilization, or manufacture of flammable gases or liquids having a flash point below one hundred ten (110) degrees F shall not be permitted within two hundred (200) feet of the boundary line separating a site from any area within Kootenai County except when stored underground or in containers of five thousand (5,000) gallons or less above ground. (When flammable gases are stored in the gaseous phase, the above limit in gallons shall be multiplied by thirty (30) to obtain the limit in cubic feet at 14.7 pounds per square inch absolute and sixty (60) degrees F.)
- C. Flammable liquids, which may get into the waste system, shall be trapped and contained at a point within the plant boundaries. No flammable liquids shall be permitted in the central waste collection and treatment system.

SECTION 11.09 NOISE

A. Definitions

1. Impact Noise - A short duration or rapidly changing sound which causes fluctuations of the sound level meter needle in excess of plus

or minus two (2) decibels and is, therefore, incapable of being accurately measured on a sound level meter.

2. Octave Band - A prescribed interval of sound frequencies which permits classifying sound according to its pitch. Octave bands specified are those adopted by the American Standards Association as, "Preferred Frequencies for Acoustical Measurements," S1.6-1960.
 3. Sound Level Meter - An instrument, including a microphone, amplifier, output meter, and frequency weighing network, for the measurement of noise and sound levels in a specified manner.
 4. Sound Pressure Level - The intensity of sound measured in decibels as recorded or indicated on a sound level meter.
- B. Sound levels shall be measured with a sound level meter and an associated octave band analyzer, both manufactured in accordance with standards prescribed by the American Standards Association. Measurements shall be made using the flat network of the sound level meter. Impact noises shall be measured with an impact noise analyzer.
- C. Noise emissions from any site shall not cause sound pressure levels greater than those listed in Column Three (3) below, measured at any point beyond the plant property line, either at ground level or at a habitable elevation, whichever is more restrictive.

Sound Pressure Level
(decibels, re: 0.0002 Microbar)

Octave Band Center
frequency (cycles
per second)

	COL. (1)	COL. (2)	COL. (3)
31.5	97	90	83
63	87	77	68
125	78	68	58
250	73	63	52
500	69	58	47
1000	65	55	44
2000	63	50	39
4000	60	48	37
8000	57	46	35
Impact Noise (Overall)	97	90	83

For the convenience of those who may wish to use sound level meters calibrated in accordance with the American Standard Z 24.10-1953, the following table shall be considered equivalent to the table listed above:

37.5-75	89	82	75
75-150	81	71	62
150-300	74	64	54
300-600	69	59	48
600-1200	66	55	44
1200-2400	63	53	42
2400-4800	62	49	38
4800-9600	59	47	36

SECTION 11.10 VIBRATION

A. Definitions:

1. Amplitude - The vibration intensity measured in inches of earthborne vibration. The amplitude is one-half (1/2) the total earth displacement, as measured with a three-component measuring system.
2. Earthborne Vibrations - A cyclic movement of the earth due to energy propagation.

- B. The amplitude in inches of earthborne vibrations caused by the plant shall not exceed

$$0.0001 \dots\dots\dots \frac{K}{F} \dots\dots\dots \text{where}$$

F = The vibration frequency in cycles per second.

K = 15 for measurements made within an Industrial zone at any point on or beyond the plant property line.

K = 3 for measurements made in any residential area outside an Industrial zone.

Impact vibrations with less than one hundred (100) impulses per minute shall be permitted amplitudes of twice those computed above.

SECTION 11.11 GLARE

Any operation or activity shall be conducted so that direct and indirect illumination shall not exceed 0.2 foot candle across lot lines of the subject property.

SECTION 11.12 WASTES AND SURFACE DRAINAGE

- A. Liquid Wastes - The volume, quality and point of discharge of industrial and domestic liquid wastes shall not exceed standards approved by the State Department of Health, or such other agency of the State of Idaho which may succeed to its authority.
- B. Surface Drainage - Storm drainage and surface runoff shall be segregated from industrial and domestic waste. To avoid contaminating surface drainage, all apparent sources of contamination, such as operating areas, loading or unloading areas, product transfer pump areas, and equipment cleaning and maintenance areas shall be curbed and drained to the waste system. Drainage from tankage area impoundments may be combined with storm drainage and surface runoff if approved by the State Department of Health.
- C. Solid Waste - Off-test and rejected products, by-products, spent catalysts, waste sludges, garbage, trash, scrap, rubble, refuse, and other

such waste materials shall be temporarily stored or permanently disposed of in such a way as not to pollute the air or surface runoff nor cause odors or an unsightly appearance. If disposal is by incineration, care shall be taken to insure compliance with other parts of these standards covering air pollution. If disposal is by landfill, disposal procedures shall comply with the rules and regulations promulgated by the State Department of Health.

SECTION 11.13 PROPERTY CONTROL

- A. Off-Street Parking - Adequate off-street parking space shall be provided for regular and temporary employees, contractor employees, and visitors. A detailed plan of proposed use of land and/or structures shall be presented to the Administrator demonstrating how parking of automobiles and/or trucks is to be resolved. Parking facilities shall not cause congestion of adjacent streets or alleyways.
- B. Off-Street Loading - Loading areas, weigh stations, and truck roads shall be located so as not to impede traffic or cause unsafe conditions on public thoroughfares. Plants shall provide adequate parking areas for vehicles which are normally and regularly waiting for loading or unloading. Warning signs shall be erected by the plant owner where truck traffic from such owner's plant enters public thoroughfares.
- C. Setback of Structures - Fixed and permanent structures on plant sites shall have a minimum setback of fifty (50) feet from any plant property line. In the case of small plant sites where this setback would result in a clear area greater than twenty (20) percent of the total plant site area, the setback distance shall be reduced to not less than the following minimum distances, providing that the resulting clear area is not less than twenty (20) percent of the total plant site area:

	Minimum setback
Property line adjoining public thoroughfare.....	50 feet
Property line adjoining other plant site.....	25 feet
Property line adjoining easements of right-of-way (other than public thoroughfare) having total width of W feet.....	50 feet
- D. Area Maintenance - Plant sites shall be maintained in accordance with good housekeeping principles and sound operating practices.
- E. Outdoor Advertising Structures and On-Premise Signs are permitted in the Industrial zone.
- F. Storage of Materials and Machinery - All storage must be indoors, or within a six (6) foot sight-obscuring fence, or screened with vegetative materials, so that the storage area cannot be seen by adjacent properties and the travelling public. Storage areas must conform to the minimum setback regulations of the zone.

SECTION 11.14 CONDITIONAL USES

- A. Slaughterhouses and Rendering Plant
- B. Auto Wrecking Yard, Junk Yard
- C. Cement, Gypsum, or Asphalt Plant
- D. Explosive - Storage and Manufacturing
- E. Above-Ground Bulk Storage of over Twenty Thousand (20,000) Gallons (per site) of Petroleum Products.
- F. Public Utility Complex Facility
- G. Restricted Surface Mining

ARTICLE 12
MINING ZONE (M)

SECTIONS:

- 12.00 MINING ZONE
- 12.01 RESTRICTIONS
- 12.02 SITE AREA
- 12.03 PERMITTED USES
- 12.04 CONDITIONAL USES
- 12.05 PROHIBITED USES
- 12.06 GENERAL STANDARDS

SECTION 12.00 MINING ZONE

The "Mining zone" is a land use classification for a district of properties suitable for excavation and processing materials secured from the earth.

SECTION 12.01 RESTRICTIONS

In the Mining zone, no building or premises shall be used nor shall any building or structure be hereafter erected or altered unless otherwise provided in this Title, except for one (1) or more of the following uses in accordance with the following standards or the rules and regulations promulgated by the State Inspector of Mines.

SECTION 12.02 SITE AREA

No uses of land in the Mining zone shall be conducted on a parcel of land less than five (5) acres.

SECTION 12.03 PERMITTED USES

- A. All surface and subsurface mining operations are permitted including the processing of materials, necessary plants and offices, equipment, storage space, and facilities directly related to the mining operation.
- B. General Farming, except the minimum lot area for the keeping of livestock shall be 3/4 acre.

SECTION 12.04 CONDITIONAL USES

- A. Sanitary Landfills, provided all requirements of the State Department of Health are met.
- B. Custodial Quarters.
- C. Public Utility Complex Facility.

SECTION 12.05 PROHIBITED USES

- A. All types of dwelling units.

- B. All types of commercial uses.

SECTION 12.06 GENERAL STANDARDS

- A. All mining operations must be one thousand (1000) feet from any Residential zone.
- B. Excavations must be fifty (50) feet from any property line and seventy-five (75) feet from any public highway right-of-way. If the nature of materials and depth of excavation constitutes danger of caving and slumping, as determined by the County Engineer and other expert opinions acquired by the Commission, the greater distance from property lines and rights-of-way shall be required.
- C. Whenever use of a site has been terminated, the owner shall undertake measures to rehabilitate the area. Specific requirements in this regard shall be specifically defined in the permit authorizing the land use and a bond required to insure rehabilitation.
- D. There shall be no disposal of top soil as such soil shall be used in the rehabilitation of the mining operation.
- E. Fencing sufficient to exclude people, livestock, and animals, if it is necessary in the interest of the public health and safety, to be determined by the Board.
- F. Road approaches to a site shall meet the requirements of the appropriate road authority.
- G. All storage must be indoors, or within a sight-obscuring fence, or screened with vegetative materials such that the storage area cannot be seen by adjacent properties and the traveling public. Storage areas must conform to the minimum setback regulations of the zone.
- H. A detailed plan of proposed use of land and/or structures shall be presented to the Administrator demonstrating how parking of automobiles and/or trucks is to be resolved. Parking facilities shall not cause congestion of adjacent streets or alleyways.

ARTICLE 13
RURAL ZONE (R)

SECTIONS:

- 13.00 RURAL ZONE
- 13.01 RESTRICTIONS
- 13.02 SITE AREA
- 13.03 NONCONFORMING LOTS OF RECORD
- 13.04 USES PERMITTED - 5 ACRES WITH 165 FT. FRONTAGE
- 13.05 USES PERMITTED - 10 ACRES WITH ROAD ACCESS
- 13.06 PROHIBITED USES
- 13.07 FRONT, SIDE, AND REAR YARD SETBACKS
- 13.08 CONDITIONAL USES

SECTION 13.00 RURAL ZONE

The "Rural zone" is a classification for a district suitable for rural uses, such as: limited agricultural pursuits including livestock production and forestry.

SECTION 13.01 RESTRICTIONS

No uses, other than those provided for in this Ordinance, are permitted.

SECTION 13.02 SITE AREA

Sixty-five (65) percent of the area of all sites shall be left in open space free from structures.

SECTION 13.03 NONCONFORMING LOTS OF RECORD

The minimum site area requirements will apply in the Rural zone, except that these regulations shall not prohibit residential uses and their accessory buildings on a nonconforming lot of record (lots divided prior to the date of this Ordinance - see Definitions). All structures shall meet the required yard setbacks for the Rural zone.

SECTION 13.04 USES PERMITTED - 5 ACRES WITH 165 FT. FRONTAGE

On property of not less than five (5) acres and with one hundred sixty-five (165) feet of frontage on an existing public right-of-way or access approved through subdivision regulations, the following uses are permitted, provided that sixty-five (65) percent of the area of the site is left in open space free of structures:

- A. Agricultural Uses - Which includes cultivation of land, storage of related agricultural products and equipment, floriculture, horticulture, nurseries, vineyards, truck gardening, animal and poultry husbandry, and general farming, except that for nonconforming lots of record the minimum lot area for the keeping of livestock shall be $\frac{3}{4}$ acre.

- B. Churches, grange halls, and other non-profit public or private community facilities.
- C. Home occupations as defined in Section 2.02.
- D. Hospitals and sanitariums (except animal hospitals - see Conditional Use Section).
- E. Institutions of higher learning, including the buildings and uses normally carried on therein.
- F. Public parks, campgrounds, picnic areas, and other public special use areas, such as fish hatcheries and game preserves.
- G. Public and private schools (except where students are under physical restraint).
- H. Recreation uses such as dude ranches, ski courses, campgrounds, and riding academies.
- I. Repair and maintenance activities, buildings, and associated storage areas when located on the same property as the residence, and also provided all storage areas are surrounded with a sight-obscuring fence and no more than one (1) person outside the immediate family is employed to work on the premises (i.e. logging contractor).
- J. Residential Uses:
 - 1. Single-Family
 - 2. Duplex - Two-Family Residence
 - 3. Manufactured Home Units - A Manufactured Home as a single residence
- K. Roadside stands of not more than three hundred (300) square feet for the sale of agricultural products produced on the premises.
- L. Storage of materials used in connection with the operation of a household and activities associated with the normal construction of all the buildings on the property. All other storage is prohibited except as provided herein.
- M. Temporary Hardship Use, subject to the standards of Section 25.06.

SECTION 13.05 USES PERMITTED - 10 ACRES WITH ROAD ACCESS

On property of not less than ten (10) acres with road access only:

All uses permitted in Section 13.04.

SECTION 13.06 PROHIBITED USES

- A. Industrial uses
- B. Manufacturing uses
- C. Commercial uses
- D. Outdoor advertising structures, except unlighted signs attached to a building not greater than thirty-two (32) square feet in size identifying a home occupation or specifying a service that is rendered or a product that is produced on the premises. Also, except signs indicating the proposed sale or rental of all or part of the property on which the sign is located.
- E. General warehousing - Storage of materials not used in connection with the above permitted uses.

SECTION 13.07 FRONT, SIDE, AND REAR YARD SETBACKS

- A. Front Yard.....25 feet
- B. Side Yard.....10 feet
- C. Flanking Street.....15 feet
- D. Rear Yard.....15 feet

SECTION 13.08 CONDITIONAL USES

- A. Gun Clubs and Rifle Ranges
- B. Commercial Fur Farms
- C. Rental Warehouse
- D. Animal Clinics or Orphanages, Hospitals, Boarding Kennels and Runs, Schools
- E. Agricultural Products Sales Store
- F. Outdoor Theaters
- G. Auto Wrecking Yards, Junk Yards, Automotive Repair
- H. Sawmills, Shingle or Planing Mill, Woodworking Plant
- I. Radio and Television Towers
- J. Airports and Landing Fields
- K. Race Tracks

- L. Explosive Storage and Manufacturing
- M. Private Resort (non-profit)
- N. Group Housing
- O. Cemeteries
- P. Sanitary Landfills
- Q. Public Utility Complex Facility
- R. Wholesale Greenhouses
- S. Restricted Surface Mining
- T. Commercial Resort
- U. Day Care Center
- V. Retirement, Convalescent, Shelter and Nursing Homes

ARTICLE 14
HIGH-DENSITY RESIDENTIAL ZONE (HDR)

SECTIONS:

- 14.00 HIGH-DENSITY RESIDENTIAL ZONE
- 14.01 RESTRICTIONS
- 14.02 SITE AREA
- 14.03 USES PERMITTED WITHIN THE AGRICULTURAL SUBURBAN ZONE
- 14.04 USES PERMITTED - MULTIPLE-FAMILY UNITS
- 14.05 USES PERMITTED - MANUFACTURED HOME ON INDIVIDUAL LOTS
- 14.06 USES PROHIBITED
- 14.07 FRONT, SIDE, AND REAR YARD SETBACKS
- 14.08 CONDITIONAL USES

SECTION 14.00 HIGH-DENSITY RESIDENTIAL ZONE

The "High-Density Residential zone" is a classification for high-density residential uses including manufactured home units used as single-family residences on individual lots or, by conditional use in parks (courts). All such districts must have direct access to arterial thoroughfare. The predominant housing type will be manufactured homes, courts, and apartments.

SECTION 14.01 RESTRICTIONS

No uses, other than those provided for in this Ordinance, are permitted.

SECTION 14.02 SITE AREA

Sixty-five (65) percent of the area of all sites must be left in open space.

SECTION 14.03 USES PERMITTED WITHIN THE AGRICULTURAL SUBURBAN ZONE

Uses permitted within the Agricultural Suburban zone will also be permitted in the High-Density Residential zone, in accordance with the area and setback standards of the Agricultural Suburban zone.

SECTION 14.04 USES PERMITTED - MULTIPLE-FAMILY UNITS

On property of not less than twelve thousand (12,000) square feet and not less than ninety (90) feet of continuous frontage on a public street, multiple-family residential uses will be permitted providing that sixty-five (65) of the land is left in open space and that there is a ratio of not less than three thousand (3,000) square feet of land per living (apartment) unit.

SECTION 14.05 USES PERMITTED - MANUFACTURED HOMES ON INDIVIDUAL LOTS

On property of not less than six thousand (6,000) square feet with not less than fifty (50) feet frontage on a public street, one (1) manufactured home may be used as a single-family residence.

SECTION 14.06 USES PROHIBITED

- A. General commercial uses, except as specifically permitted in Manufactured Home Parks (see Section 33.29)

- B. Industrial or manufacturing uses
- C. Outdoor advertising, except to identify a particular permitted use such as a manufactured home court. Said signs shall have an area of not more than thirty-two (32) square feet on each face placed back to back, shall not exceed twenty (20) feet in height, and shall be situated at least ten (10) feet from any public right-of-way or private drive.
- D. Storage of materials not associated with the permitted use.

SECTION 14.07 FRONT, SIDE, AND REAR YARD SETBACKS

The following front, side, and rear yard requirements shall apply in the High-Density Residential zone, except in Manufactured Home Parks:

- A. Front Yard.....25 feet
- B. Side Yard.....10 feet
With an Alley.....6 feet
- C. Flanking Street.....15 feet
- D. Rear Yard.....25 feet

SECTION 14.08 CONDITIONAL USES

- A. Golf Courses and Driving Ranges
- B. Commercial Resort
- C. Retirement and Convalescent Home
- D. Group Housing
- E. Private Resort
- F. Manufactured Home Parks (courts)
- G. Public Utility Complex Facility
- H. Day Care Facility

ARTICLE 15
PLANNED UNIT DEVELOPMENT (Overlay District)

SECTIONS:

- 15.01 PURPOSE AND INTENT
- 15.02 USES PERMITTED
- 15.03 AREA BULK REGULATION
- 15.04 DENSITY
- 15.05 PERIMETER REQUIREMENTS
- 15.06 COMMON OPEN SPACE
- 15.07 PROCEDURE FOR ESTABLISHING A PLANNED UNIT DEVELOPMENT
- 15.08 CONDITIONS
- 15.09 APPLICABLE ORDINANCES AND LAWS

SECTION 15.01 PURPOSE AND INTENT

The Planned Unit Development is designed to provide for small and large scale developments, incorporating a single type or a variety of uses, which are planned and developed as a unit. Such development may consist of individual lots or it may have common building sites. Common open space for recreational purposes may be an element of the development.

The Planned Unit Development may also provide public facilities, parks, playgrounds, recreational areas, or reservation of areas for educational and governmental facilities. The Planned Unit Development shall be governed by the requirements of this Article. A Planned Unit Development Overlay may be permitted in any zone.

SECTION 15.02 USES PERMITTED

The primary uses in any Planned Unit Development will be in conformance with those allowed in the underlying zone or zones.

- A. In any zone, the Board may also permit such additional uses as churches, public schools, golf courses, and community clubs, provided they are compatible and harmoniously incorporated into the design of the Planned Unit Development. Such additional uses shall not, by reason of their location, construction, manner, or timing of operation, signs, lighting, parking arrangements, or other characteristics, have adverse effects on residential uses within or adjoining the property, or create traffic congestion or hazards to vehicular or pedestrian traffic.
- B. In Residential zones, convenience shops intended for the principal use of occupants of the residential units, may be located within a multiple-dwelling, administration, or community building of the development. Business signs or displays visible from the outside of buildings within Residential zones shall not exceed eight (8) square feet in area and shall be either unlighted or employ indirect lighting not to exceed 0.2 foot candles in intensity.

The following sales or services are permitted within, but not limited to, the aforementioned convenience shops: Confections, delicatessens,

pharmacies, dry-goods, groceries, hardware, jewelry, laundromats, dry cleaning, personal services, and professional offices.

SECTION 15.03 AREA BULK REGULATION

The distance between buildings in a Planned Unit Development may vary from that required in the underlying zone, if through the use of topography, location, or design, such buildings or building will not impinge upon the privacy of adjacent existing structures.

The proposed location and arrangement of structures should be compatible with existing adjacent dwellings and existing or proposed neighborhood developments. High-rise buildings shall be located within a Planned Unit Development in such a manner so as not to create any adverse impact on adjoining low-rise buildings.

A Planned Unit Development shall not be permitted unless adequate road, water service, fire and sewage disposal methods within the proposal meet all local and state standards.

SECTION 15.04 DENSITY

The overall density of a Planned Unit Development shall not exceed the requirements of the underlying zone(s). Common open space and living space shall be included in the overall density.

If a Planned Unit Development is located in more than one zoning district, the space and density requirements shall be calculated separately. The distribution of dwellings or other land uses within the Planned Unit Development shall not be affected by the zoning district boundaries.

SECTION 15.05 PERIMETER REQUIREMENTS

If topographical or other barriers do not provide adequate protection for existing uses adjacent to the Planned Unit development, the Board may impose either, or both, of the following requirements:

- A. Structures located within the perimeter of the Planned Unit Development must be set back by a distance sufficient to protect the privacy and amenity of adjacent existing uses.
- B. Such structures located adjacent to the perimeter of the Planned Unit Development must be permanently screened.

SECTION 15.06 COMMON OPEN SPACE

If common open space is included in the proposal, the Board shall not approve a Planned Unit Development unless it meets the following standards:

- A. The location, shape, size, and character of the common open space shall be provided in a manner to meet the needs of the Planned Unit Development.

- B. The uses intended for the common open space must be appropriate to the scale and character of the planned development, considering its size, density, expected population, topography, and the number and type of dwellings to be provided.
- C. Common open space should be suitably improved for its intended use, but common open space containing natural features, existing trees, and ground cover worthy of preservation may be left unimproved. The buildings, structures, and improvements which are permitted in the common open space shall be appropriate to the uses which are approved for the common open space and shall conserve and enhance the amenities of the common open space having regard to its topography and unimproved condition.
- D. The development schedule must coordinate the improvement of the common open space, and the construction of all buildings within the Planned Unit Development.
- E. The use and improvement of the common open space shall be planned in relation to any existing public or semi-public open space which adjoins or is within one thousand (1,000) feet of the perimeter of the Planned Unit Development.

All land shown on the final development plan as common open space shall be conveyed to an individual or organization responsible for ownership and maintenance of the open space. The form of ownership and maintenance must be approved by the Board prior to recording of the final development plan. The individual or organization shall not dispose of the common open space without approval by the Board.

In evaluating the uses proposed, area requirements, density, and open space within the Planned Unit Development, the Board should additionally consider the following factors:

1. Access to the Planned Unit Development;
2. Traffic congestion in the streets which adjoin the Planned Unit Development;
3. The burden on public facilities which serve or are proposed to serve the Planned Unit Development.

SECTION 15.07 PROCEDURE FOR ESTABLISHING A PLANNED UNIT DEVELOPMENT

An applicant wishing to receive approval of a Planned Unit Development within Kootenai County shall submit plans in accordance with procedures provided for under this Section. If a zone change is required, application shall be in accordance with Article 27 of this Ordinance.

- A. Pre-application Conference—Before submitting an application for a Planned Unit Development, an applicant should confer with the Planning Department to obtain information and guidance. This should be accomplished before

entering into binding commitments or incurring substantial expense in the preparation of plans, surveys, and other data.

- B. An applicant desiring to establish a Planned Unit Development shall submit two (2) copies of a master plan, indicating the following:
1. A key map showing the location of the site.
 2. The size and topography of the site.
 3. A plan showing the proposed general layout; the location of various types of land uses; the approximate location, use, height, and bulk of buildings; the proposed density of population in each distinct residential area; the location and size of recreational spaces, parks, schools, and other facilities which are intended for public use; the provisions for automobile parking; and the size and floor space of commercial or industrial uses.
 4. A public utility plan for sanitary sewer, water, and storm drainage.
 5. A plan showing the width and location of proposed streets, grades, and public ways.
- C. The applicant shall also submit a written statement providing the following information:
1. An explanation of the character of the Planned Unit Development and the reasons why the Planned Unit Development is consistent with all applicable County Ordinances.
 2. Two (2) copies of restrictive covenants, grants or easements, or other restrictions proposed to be imposed upon the use of the land, buildings, and structures including easements or grants for public utilities.
 3. Proof of the present ownership of all of the land included within the Planned Unit Development and the applicant's interest in the land proposed for development.
 4. The form of organization proposed to own and maintain the common open space.
 5. Letters of acknowledgement from the appropriate road, fire, health, and water districts. The letters shall indicate that the agency has reviewed the proposal, and stipulate any conditions or requirements necessary for approval.
 6. A development schedule indicating the approximate date when construction of the project can be expected to begin.
 7. The approximate dates in which stages of the project will be built.

8. The approximate date when the development will be completed.

D. Improvements and Facilities Required

Prior to recording of the final development plan, the applicant will complete the necessary road, fire, sewage, and water system construction, or provide a suitable guarantee in a form acceptable to the Board of County Commissioners in an amount commensurate with improvements remaining to be completed. Said guarantee will secure to the County construction and installation of improvements within an agreed time period. The amount of the guarantee will be set at one hundred fifty (150) percent of the total cost of construction estimated by the sponsor's engineer. The guarantee funds will not be released by the Board of County Commissioners unless and until a letter of approval has been received from all applicable agencies or districts that are responsible for acceptance and/or maintenance.

1. Surety Bond:

- (a) Accrual: The bond shall accrue to the County to cover construction, operation, and maintenance of the specific public improvement.
- (b) Amount: The bond shall be in an amount equal to one hundred fifty (150) percent of the engineer's total estimated cost for completing construction of the specific road, water, fire, and sewage system improvements, as approved by the Board.
- (c) Term Length: The term length in which the bond is in force shall be for a period to be specified by the Board for the specific public improvement.
- (d) Bonding or Surety Company: The Bond shall be with a surety company authorized to do business in the State of Idaho, acceptable to the Board.

2. Cash Deposit, Certified Check, Negotiable Bond, or Irrevocable Bank Letter of Credit:

- (a) Treasurer, Escrow Agent or Trust Company: A cash deposit, certified check, negotiable bond, or an irrevocable bank letter of credit, such surety acceptable by the Board, shall accrue to the County. These deposits shall be made with the County Treasurer, or deposited with a reasonable escrow agent, or trust company, subject to the approval of the Board.
- (b) Dollar Value: The dollar value of the cash deposit, certified check, negotiable bond, or an irrevocable bank letter of credit, shall be equal to one hundred fifty (150) percent of the engineer's total estimated cost of construction of the specific road, water, fire, and sewage system improvements, as approved by the Board.

- (c) Escrow Time: The escrow time for the cash deposit, certified check, negotiable bond, or irrevocable bank letter of credit, shall be for a period to be specified by the Board.
- (d) Progressive Payment: In the case of negotiable bond, irrevocable bank letter of credit, cash deposits, or certified checks, an agreement between the County and the developer may provide for progressive payment out of the approved guarantee, to the extent of the cost of the completed portion of the public improvement.

3. Penalty in Case of Failure to Complete Construction:

In the event the developer fails to complete such work within the period of time as required by the conditions of the guarantee for the completion of public improvements, the guarantee shall be forfeited to the Board. The Board shall arrange to have such work completed up to the amount of the guarantee. In no case shall the Board be required to expend any funds other than those provided by the guarantee. In order to accomplish this, the Board shall reimburse itself for any cost and expense thereof by appropriating the guarantee.

4. In those cases where a subdivision plat will be required, a detailed proposal of the Planned Unit Development will be submitted with the preliminary plat.

SECTION 15.08 CONDITIONS

- A. Minor changes in location and height of building and structures may be authorized by the Planning and Building Departments, if required by engineering or other circumstances not foreseen at the time the final development plan was approved.
- B. All other changes in use, any rearrangement of lots, blocks, and building tracts, any changes in the provisions of the common open space, and all other changes in the approved final development plan must be approved by the Board after being considered under the procedures authorized by Article 27 of this Ordinance. No amendments may be made in the approved final development plan unless they are shown to be required by changes in conditions that have occurred since the final development plan was approved or by changes in the development policy of the County.

SECTION 15.09 APPLICABLE ORDINANCES AND LAWS

The Planned Unit Development must be in conformance with all Ordinances in effect within Kootenai County at the time of approval. After approval by the Board, the final development plan and restrictive covenants will be filed with the County Recorder. Requirements for notice, and procedures for hearing a Planned Unit Development, shall be in accordance with this Article, Article 27 of this Ordinance, and Idaho Code.

ARTICLE 16
AIRPORT DISTRICT (Overlay District)

SECTIONS:

- 16.00 AIRPORT DISTRICT (Overlay District)
- 16.01 GENERAL
- 16.02 AREA OF APPLICABILITY
- 16.03 RESTRICTIONS
- 16.04 MARKING AND LIGHTING
- 16.05 VARIANCES
- 16.06 AIRPORT AREA DESIGNATIONS
- 16.07 FRONT, SIDE, AND REAR SETBACK REQUIREMENTS
- 16.08 HEIGHT RESTRICTIONS
- 16.09 OPEN SPACE REQUIREMENT
- 16.10 STORAGE REQUIREMENTS
- 16.11 LANDSCAPING REQUIREMENTS
- 16.12 SIGNS
- 16.13 AIRPORT DISTRICT SECURITY
- 16.14 AIRPORT OVERLAY MAP

SECTION 16.00 AIRPORT DISTRICT (Overlay District)

The purpose of this district is to protect the airspace in the vicinity of the airport and its runway approaches, to protect the lives of airport users, and to protect the property and occupants of land in its vicinity. This district will regulate and restrict the height of structures and objects, either natural or man-made, and restrict the uses of the property in accordance with this Ordinance, the boundaries outlined on the Kootenai County Zoning Map, and the areas depicted on the Airport Overlay Map.

SECTION 16.01 GENERAL

The uses permitted, the building site areas, setbacks, and all other regulations imposed by the provisions of the Kootenai County Zoning Ordinance in any Zone shall apply under this Title, except as provided in this Article.

SECTION 16.02 APPLICABILITY

All of the unincorporated land in Kootenai County lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces identified on the Kootenai County Zoning Map as:

- A. Height Limitation Area - All of the land within fourteen thousand (14,000) feet, horizontal distance from the established airport primary runway surface (precision instrument runway and approaches), divided into four (4) height limiting categories.
 - 1. Transition Area - Slope seven (7) feet outward for each foot upward beginning at the primary approach surface extending to a height of one hundred fifty (150) feet.

2. Horizontal Area - One hundred fifty (150) feet above the airport elevation or at a height of two thousand four hundred sixty-eight (2,468) feet above Mean Sea Level.
3. Conical Area - Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the Horizontal Area at one hundred fifty (150) feet above the airport elevation and extending to a height of three hundred fifty (350) feet above the airport elevation.
4. Approach Areas -
 - a. Slopes fifty (50) feet outward for each foot upward beginning at the end of, and at the same elevation as, the primary surface; and extending to a horizontal distance of ten thousand (10,000) feet along the extended runway centerline; thence sloping forty (40) feet outward for each foot upward to an additional horizontal distance of forty thousand (40,000) feet along the extended runway centerline.
 - b. Slopes thirty-four (34) feet outward for each foot upward beginning at the end of, and at the same elevation as, the primary surface; and extending to a horizontal distance of ten thousand (10,000) feet along the extended runway centerline.
 - c. Slopes twenty (20) feet outward for each foot upward beginning at the end of, and at the same elevation as, the primary surface, and extending to a horizontal distance of five thousand (5,000) feet along the extended runway centerline.
- B. Land Use Guide (L.U.G.) Area - All of the land identified as L.U.G. which will conform to the 10 PNdb composite noise contour established by the Airport Master Plan, considered hazardous because of noise or has the potential of endangering the lives and property of the users.

SECTION 16.03 RESTRICTIONS

- A. Notwithstanding any other provisions of this Title, no use may be made of land or water within any area established by this District in such a manner as to create electrical interference with navigational signals or radio communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.
- B. No place of public assembly (i.e., schools, theaters, churches, hospitals) shall hereafter be constructed or otherwise established within the L.U.G. Area as identified.
- C. All new subdivisions within the L.U.G. Area will be subject to Aviation Easements.

SECTION 16.04 MARKING AND LIGHTING

Notwithstanding the provisions of the nonconforming uses prescribed for Height Limitation Areas, the owner, and all future owners, of any existing nonconforming structure or tree hereby waives the right to object to the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Federal Aviation Administration to indicate to the operators of aircraft in those Height Limitation Areas of airport obstructions. Such markers and lights shall be installed at the expense of the Kootenai County Airport.

SECTION 16.05 VARIANCES

Any person desiring to erect or increase the height of any structure or the growth of any tree not in accordance with the regulations prescribed herein will apply to the Board of Adjustment or Hearing Examiner. The application will be accompanied by a determination from the Airport Board, or the Airport Development Control Committee, as applicable; and the Federal Aviation Administration as to the effect of the proposal on the operation of the airport.

SECTION 16.06 AIRPORT AREA DESIGNATIONS

- A. Operations Areas: Those areas external to the Building Restriction Line, which are defined as areas for airport operations only. Airport operations areas are defined as aircraft maintenance areas, hangars, passenger service areas, and other structures with frontage on airport ramps, landing and take off runways, and taxi-ways.
- B. Terminal Support Area: The area designated for activities which provide support services for activities for airline passengers, or other members of the public utilizing the airport terminal. The support services are commercial in nature and include, but are not limited to, parking, car rental agencies, restaurants, motels, hotels, etc.
- C. Light Industrial Areas (LI-1 and LI-2): Those areas identified as a land use classification that meets the requirements set forth in the Light Industrial District, except as specified in the airport district overlay.

SECTION 16.07 FRONT, SIDE, AND REAR SETBACK REQUIREMENTS

- A. Operations Area - No setback requirements except as specified below:
 - 1. Uniform Building Code requirements for abutting structures shall apply.
 - 2. Apron, runway, taxiway, and tiedown clearance specifications specified by the Federal Aviation Administration shall apply.
 - 3. Recommendations shall be sought to ensure consistency with procedures and regulations specified by special purpose districts (Fire District, Highway District, Panhandle Health District, etc.).

4. When the use abuts a roadway, or any other zone defined in this Ordinance; then the side setback shall be five (5) feet for each ten (10) feet of building height above grade.
5. Setbacks shall be determined during the lease negotiation process and incorporated as conditions, covenants, and restrictions in the lease. The setbacks shall be established as required by need, in terms of the following:
 - a. Compliance with clearance specifications for aprons, runways, taxiways, and tiedown areas established by the Federal Aviation Administration
 - b. Compliance with landscaping and open space sections of this Article
 - c. Compliance with this Section as set forth above

B. Terminal Support Area

1. Front: Thirty-five (35) feet
2. Side: No requirement except when a commercial or light industrial structure abuts any other zone designated in this ordinance; then the side setback requirement shall be five (5) feet for each ten (10) feet of building height above grade.
3. Side (corner lot flanking street): fifteen (15) feet
4. Rear: Fifteen (15) feet

C. Light Industrial Areas (LI-1 and LI-2)

1. Front: Thirty-five (35) feet
2. Side: No requirement except when a commercial or light industrial structure abuts any other zone designated in this ordinance; then the side setback requirement shall be five (5) feet for each ten (10) feet of building height above grade.
3. Side (corner lot flanking street): fifteen (15) feet.
4. Rear: Fifteen (15) feet

SECTION 16.08 HEIGHT RESTRICTIONS

- A. Except as otherwise stated in this Ordinance, and except as necessary and incidental to airport operations, no structure or tree shall be constructed, altered, maintained, or allowed to grow in any airspace zone created in Section 16.02 so as to project above any imaginary airspace surfaces described in Article 16. Any proposed structure which will exceed thirty-five (35) feet above grade in the Airport District shall have the site and structural plans submitted to the Kootenai County

Airport Advisory Board or the Airport Development Control Committee, as appropriate, for architectural/design/safety review. The cognizant reviewing authority shall provide recommendations to the Board of County Commissioners for final approval of the proposed structure.

- B. Operations Area: No structure or tree shall be constructed, altered, maintained, or allowed to grow in the Operations Area, so as to exceed four (4) stories or a maximum height of fifty (50) feet above airport elevation.
- C. Terminal Support Area: Shall conform to height restrictions set forth in Section 16.08A.
- D. Light Industrial Areas (LI-1 and LI-2): Shall conform to height restrictions set forth in 16.08.A.

SECTION 16.09 OPEN SPACE REQUIREMENT

- A. Operations Area: Maximum building coverage of eighty (80) percent of the site is allowed. Parking areas will not be calculated as building area, but parking structures with levels above grade shall be treated as buildings and, therefore, shall be part of the maximum building coverage.
- B. Terminal Support Area: Maximum building coverage of sixty-five (65) percent of a site is allowed. Parking areas will not be calculated as building area, but parking structures with levels above grade shall be treated as buildings and, therefore, shall be part of the maximum building coverage. The goal is to develop a "campus style" commercial area with an emphasis on landscaped green belts and open space.
- C. Light Industrial Areas LI-1: Maximum building coverage of sixty (60) percent of a site is allowed. Parking areas will not be calculated as building area, but parking structures with levels above grade shall be treated as buildings and, therefore, shall be part of the maximum building coverage. The goal is to develop "campus-style" light industrial area stressing open space and landscaped green belts.
- D. Light Industrial Area LI-2: Maximum building coverage of seventy-five (75) percent of a site is allowed. Parking areas will not be calculated as building area, but parking structures with levels above grade shall be treated as buildings and, therefore, shall be part of the maximum building coverage. The goal is to develop a light industrial area with more limited open space and green-belt areas than those in the LI-1 area.

SECTION 16.10 STORAGE REQUIREMENTS

- A. Operations Area
 - 1. No outdoor storage.

2. Automobiles or other machinery normally displayed for sales purposes on an open lot shall not be displayed in this area. This restriction does not apply to the display of aircraft for the purpose of sale.
 3. Storage of below-ground petroleum products shall be permitted for airport operations and shall meet the regulations and standards established by the following agencies:
 - a. Environmental Protection Agency
 - b. Idaho Department of Environmental Quality
 - c. Federal Aviation Administration
 - d. National Fire Protection Association
 - e. Hayden Lake Fire Protection District
 - f. Any other agency which may have jurisdiction subsequent to adoption of this Ordinance.
 4. The use, handling, and storage of critical materials shall be in accordance with recommendations established by State or Federal Law.
- B. Terminal Support Area:
1. No outdoor storage.
 2. Automobiles or other machinery normally displayed for sales purposes on open lot shall not be displayed in this area.
 3. Storage of below-ground petroleum products - Storage of petroleum products in quantities of less than twenty thousand (20,000) gallons (total for each site) shall be below ground and shall meet regulations and standards established by the following agencies:
 - a. Environmental Protection Agency
 - b. Idaho Department of Environmental Quality
 - c. Federal Aviation Administration
 - d. National Fire Protection Association
 - e. Hayden Lake Fire Protection District
 - f. Any other agency which may have jurisdiction subsequent to adoption of this Ordinance.
 4. The use, handling, and storage of critical materials shall be in accordance with recommendations established by State or Federal Law.
- C. Light Industrial Area (LI-1)
1. No outdoor storage.
 2. Automobiles or other machinery normally displayed for sales purposes on open lot shall not be displayed in this area.
 3. Storage of below-ground petroleum products - Storage of petroleum products in quantities of less than twenty thousand (20,000) gallons (total for each site) shall be below ground and shall meet regulations and standards established by the following agencies:

- a. Environmental Protection Agency
 - b. Idaho Department of Environmental Quality
 - c. Federal Aviation Administration
 - d. National Fire Protection Association
 - e. Applicable Kootenai County Fire Protection District
 - f. Any other agency which may have jurisdiction subsequent to adoption of this Ordinance.
 4. The use, handling, and storage of critical materials shall be in accordance with recommendations established by State or Federal Law.
- D. Light Industrial Area (LI-2)
1. Storage of materials and machinery - all storage shall be indoors, or within a six (6) foot high sight obscuring fence, or screened with vegetative materials, so that the storage area cannot be seen by adjacent properties and the traveling public. Storage areas must conform to the minimum setback regulations of the zone. Automobiles or other machinery normally displayed for sales purposes on an open lot shall not be so displayed.
 2. Storage of below-ground petroleum products - Storage of petroleum products in quantities of less than twenty thousand (20,000) gallons (total for each site) shall be below ground and shall meet regulations and standards established by the following agencies:
 - a. Environmental Protection Agency
 - b. Idaho Department of Environmental Quality
 - c. Federal Aviation Administration
 - d. National Fire Protection Association
 - e. Hayden Lake Fire Protection District
 - f. Any other agency which may have jurisdiction subsequent to adoption of this Ordinance.
 3. The use, handling, and storage of critical materials shall be in accordance with recommendations established by State or Federal Law.

SECTION 6.11 LANDSCAPING REQUIREMENTS

- A. The front, rear, and side setback areas shall be landscaped with an effective combination of ground cover, shrubbery, and trees. All other unpaved areas shall be landscaped in similar fashion, except those areas designated for parking or storage on site plans approved by the Planning Administrator.
- B. The entire area between the curb and a point fifteen (15) feet back from the front lot line shall be landscaped for the purpose of forming a vegetative frontage, except for driveway access in the immediate area. Notwithstanding the aforementioned vegetative frontage, the entire area between the curb and the building line of any lot, except for concrete/paved walkways, shall be landscaped.

- C. Undeveloped areas that are owned or are under lease agreement, and are proposed or set aside for future development shall be maintained in a weed-free condition by the lessee.
- D. All areas under lease shall submit a landscaping plan to the Airport Development Control Committee for architectural/design review. The Committee shall provide recommendations to the Board of County Commissioners for all landscaping in the Airport District.
- E. Areas used for parking shall be landscaped in such a manner as to provide a vegetative frontage, or a visual vegetative barrier along areas in view of access streets, freeways, and adjacent properties.
- F. All stormwater run off from parking areas shall receive primary treatment and disposal through grassy swales. Engineered site plans shall allow acreage sufficient to provide primary treatment for the first one-half (1/2) inch of stormwater runoff generated from paved or impervious parking surface.

SECTION 16.12 SIGNS

No sign shall be erected or maintained in the Airport District except in conformity with the following:

- A. All signs attached to a building shall be single-faced, surface-mounted, and attached parallel to the wall on which it is mounted.
- B. Signs visible from the exterior of any structure may be lighted, but no signs or any other contrivance shall be devised or constructed so as to rotate, gyrate, blink, or move in any animated fashion.
- C. Free-standing or surface-mounted signs shall relate in its subject matter to accommodations, services, commodities, or activities on the premises upon which it is located; as distinguished from a sign which directs attention to or advertises an occupancy, accommodation, service, or activity supplied or originating on other premises.
- D. One (1) double- or single-faced free standing or one (1) single-faced surface-mounted sign shall be permitted per street frontage. No sign, except flight-line approved signs, shall exceed one hundred (100) square feet in area per face.
- E. Two (2) double- or single-faced free-standing or two single-faced surface-mounted signs shall be permitted where frontage exceeds two hundred (200) feet linear/straight-line distance. The signs shall be separated by at least one hundred (100) feet, and shall conform to all standards set forth in this Section.
- F. On corner lots the following standards apply:
 - 1. One (1) double- or single-faced free-standing or one (1) single-faced surface-mounted sign shall be permitted on each roadway, or

2. Two (2) double-faced free-standing or two single-faced surface-mounted signs shall be permitted on each roadway frontage that exceeds two hundred (200) feet linear/straight-line distance, or
 3. One (1) single-faced free-standing sign placed perpendicular to a line bisecting the corner angle, or one (1) double-faced free-standing sign placed so as to bisect the corner angle. The signs shall conform to all standards set forth in the Section, and shall be placed outside of the visibility triangle established in Section 25.01.
- G. Flight-Line Commercial Signs are defined as signs that face the flight-line for the purposes of providing commercial directional information for aircraft on runways or taxiways. No flight-line commercial sign shall be erected or maintained in the Airport District except in conformity with the following:
1. One (1) single-faced free-standing or surface-mounted sign shall be permitted on a parcel that has frontage on a runway or taxiway. No flight-line commercial sign shall exceed eight hundred (800) square feet in area. These signs are permitted in the Airport Operations Area only, and shall meet height and setback standards established in this Article.
 2. All flight-line commercial sign designs and plans shall be submitted to the Kootenai County Airport Advisory Board for architectural, design, and operational review prior to construction. The Board shall provide recommendations to the Board of County Commissioners for all flight-line signs which are to be erected in the Airport District.
- H. A sign advertising the sale, lease, or hire of the site shall be permitted. Signs shall not exceed a maximum area of thirty-two (32) square feet.
- I. No free-standing signs shall exceed eight (8) feet above grade in vertical height. Free standing signs shall not be erected within ten (10) feet of a lot line. These restrictions do not apply to community directional signs, flight-line commercial signs, or special purpose signs deemed appropriate by the Board of County Commissioners.
- J. Wall signs shall be of fixture or molded design; signs painted or papered directly on the surface of a wall shall not be permitted.
- K. Signs mounted on fencing shall be metal directional signs only, and shall be generic directional signs closely approximating the lettering, dimension, finish and color used for community directional signs.
- L. All sign designs and plans shall be submitted to the Airport Development Control Committee for architectural/design review. The Committee shall provide recommendations to the Board of County Commissioners for all

signs, except flight-line signs, which are to be erected in the Airport District.

SECTION 16.13 AIRPORT DISTRICT SECURITY

Airport District security shall be maintained in conformance with Federal Aviation Regulations, Part 107, as set forth by the Federal Aviation Administration.

ARTICLE 24
ROAD FRONTAGE AND FRONTAGE LENGTH
ADMINISTRATIVE EXCEPTIONS

SECTIONS:

- 24.01 APPLICABILITY
- 24.02 MOVED TO ARTICLE 2
- 24.03 REQUIREMENTS FOR ROAD FRONTAGE AND FRONTAGE LENGTH EXCEPTIONS
- 24.04 PROCEDURES FOR ROAD FRONTAGE AND FRONTAGE LENGTH VARIANCES
- 24.05 PARCELS OF LAND WHICH ARE ACCESSIBLE ONLY BY WATER

SECTION 24.01 APPLICABILITY

This Article shall:

- A. Apply to tracts of land in discrete ownership existing as of June 20, 1984.
- B. Not apply to tracts of land in discrete ownership created on or after June 21, 1984.
- C. Not apply to parcels of land which are in violation of Section 1.05 (APPLICABILITY) of the Kootenai County Subdivision Ordinance.
- D. Apply only to parcels which do not meet the minimum frontage length requirements of the Kootenai County Zoning Ordinance and/or which have no road frontage.

SECTION 24.02 - Definitions moved to Article 2

SECTION 24.03 REQUIREMENTS FOR ROAD FRONTAGE AND FRONTAGE LENGTH EXCEPTIONS

- A. For lots of record which have road frontage but do not meet the minimum frontage length requirements of the Kootenai County Zoning Ordinance, the following provisions shall apply:
 - 1. If the conveyance of a lot or parcel of land, which is described by metes and bounds or aliquot parts, is not recorded in the Kootenai County Clerk and Recorder's Office, other evidences of conveyance may be submitted to the Administrator for review. Other evidences of conveyance may include purchase contract, earnest money agreement, or other document containing the legal description of the parcel. A Record of Survey is not a conveyance for purposes of this Article.
 - 2. The minimum frontage length, owned in fee simple, shall be sixty (60) feet or fifty (50) percent of the minimum frontage length requirement of this Ordinance for the zone in which the lot of record is located, whichever is greater.
 - 3. Applicant shall obtain an approach permit from the appropriate Highway District.

- B. For lots of record which do not have road frontage and are served by existing public or private easements or rights-of-way, the following provisions shall apply:
1. If the conveyance of a lot or parcel of land, which is described by metes and bounds or aliquot parts, is not recorded in the Kootenai County Clerk and Recorder's Office, other evidences of conveyance may be submitted to the Administrator for review. Other evidences of conveyance may include a purchase contract or earnest money agreement containing the legal description of the parcel. A Record of Survey is not a conveyance for purposes of this Article.
 2. The lot width shall be equal to or greater than the minimum frontage length requirement of this Ordinance for the zone in which the lot of record is located.
 3. Said easements or rights-of-way shall be of record as of June 20, 1984, in the Kootenai County Clerk and Recorder's Office.
 4. Said easements or rights-of-way shall connect to a publicly dedicated and maintained road, either directly or via other recorded easements or rights-of-way.
 5. Said easements or rights-of-way shall have an approach onto a publicly dedicated and maintained road which is approved by the appropriate Highway District.
 6. Said easements or rights-of-way shall be a minimum of twenty (20) feet wide and shall contain a twenty (20) foot wide travelway capable of providing access for two-wheel drive emergency access vehicles on a year-round basis.
 7. Said easements or rights-of-way may serve more than one (1) parcel of land.
- C. For lots of record which do not have road frontage and are not served by existing public or private easements or rights-of-way, the following provisions shall apply:
1. If the conveyance of a lot or parcel of land, which is described by metes and bounds or aliquot parts, is not recorded in the Kootenai County Clerk and Recorder's Office, other evidences of conveyance may be submitted to the Administrator for review. Other evidences of conveyance may include a purchase contract or earnest money agreement containing the legal description of the parcel. A Record of Survey is not a conveyance for purposes of this Article.
 2. The lot width shall be equal to or greater than the minimum frontage length requirement of this Ordinance for the zone in which the lot of record is located.

3. Easements or rights-of-way are to be obtained and shall meet the following requirements:
- (a) Shall be recorded in the Kootenai County Clerk and Recorder's Office.
 - (b) Shall connect to a publicly dedicated and maintained road, directly or via other recorded easements or rights-of-way.
 - (c) Shall have an approach onto a publicly dedicated and maintained road which is approved by the appropriate Highway District.
 - (d) Shall be a minimum of sixty (60) feet wide, except where land development patterns and restrictions placed on public or private easements or rights-of-way by deeds or other instruments may require a lesser width, provided that the easement shall contain a twenty (20) foot wide travelway capable of providing access for two-wheel drive emergency access vehicles on a year-round basis.
 - (e) Said easements or rights-of-way may serve more than one (1) parcel of land.

SECTION 24.04 PROCEDURES FOR ROAD FRONTAGE AND FRONTAGE LENGTH EXCEPTIONS

All requests for exceptions from the road frontage and frontage length requirements of this Ordinance shall be reviewed and processed by the Administrator. The Applicant shall submit the legal description, documentation of conveyance, and all such other information as required to determine conformance with the standards of this Article. In addition, the Administrator shall consider whether the request conforms with the Goals and Objectives of the Kootenai County Comprehensive Plan, the Purpose of this Ordinance, the provisions of all other applicable Ordinances, and regulations of other agencies prior to issuance of a permit.

SECTION 24.05 PARCELS OF LAND WHICH ARE ACCESSIBLE ONLY BY WATER

When a lot or parcel of land is accessible only via a navigable body of water, said lot shall be subject to the minimum frontage length requirements of the Kootenai County Zoning Ordinance.

ARTICLE 25
SUPPLEMENTARY REGULATIONS

SECTIONS:

- 25.01 SUPPLEMENTARY REGULATIONS
- 25.01 VISIBILITY AT INTERSECTIONS
- 25.02 ACCESSORY BUILDINGS
- 25.03 ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE ON A LOT
- 25.04 EXCEPTIONS TO HEIGHT REGULATIONS
- 25.05 PARKING, STORAGE, OR USE OF MAJOR RECREATIONAL EQUIPMENT
- 25.06 TEMPORARY HARDSHIP USE PERFORMANCE STANDARDS

SECTION 25.00 SUPPLEMENTARY REGULATIONS

Supplementary Regulations are applicable in all zones covered by this Ordinance.

SECTION 25.01 VISIBILITY AT INTERSECTIONS

On a corner lot, nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of two and one half (2 1/2) and ten (10) feet above the centerline grades of the intersecting streets of such corner lots and a line joining points along said street lines fifty (50) feet from the point of intersection.

SECTION 25.02 ACCESSORY BUILDINGS

Accessory buildings shall not be erected in open space required by this Ordinance. Separate accessory buildings shall not be erected within five (5) feet of any other building.

SECTION 25.03 ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE ON A LOT

- A. In Commercial, Light Industrial, Industrial, Mining, and High Density Residential zones, more than one (1) structure housing a permitted principal use may be erected on a single lot, provided that the open space and other requirements of this Ordinance shall be met for each structure as though it were on an individual lot.
- B. In Agricultural, Agricultural Suburban, Restricted Residential and Rural zones, no more than one (1) structure housing a permitted residential use may be erected on a single lot, unless specified in the individual zone.

SECTION 25.04 EXCEPTION TO BULK REGULATIONS

A. Exception to Height Requirements

Height limitations contained in this Ordinance, except those shown under Section 16.02.A. of the Airport District, do not apply to spires, belfries, cupolas, antennas, water tanks, on-premise signs (signage for businesses on the premises), ventilators, chimneys, or other appurtenances

usually required to be placed above the roof level and not intended for human occupancy.

B. Exceptions to Setback Requirements

1. The setback requirements as previously stated in this Ordinance shall not apply to:
 - a. fences less than eight (8) feet in height and retaining walls
 - b. poured concrete structures on grade such as patios and sidewalks
 - c. platforms necessary for access from roadways to garages or for parking purposes and which are not enclosed
 - d. stairways and walkways (which do not exceed 4 feet in width), and stairway landings (which do not exceed 6 feet in width or length) subject to the following setback requirements:
 - 1) Front and Rear Yard none
 - 2) Side Yard 5 feet
 - e. eave projections which:
 - 1) do not exceed 2 feet or
 - 2) are for the purpose of covering a stairway or walkway as previously defined and which shall not exceed the setback requirements contained in this Section.
2. Setback requirements, as previously stated in this Ordinance, shall not apply to on-premise signs (signage for businesses on the premises). Such signs shall be totally contained upon the premises, shall not project into rights-of-way, easements, or onto other properties, and shall conform to the requirements of all other applicable agencies or departments.

SECTION 25.05 PARKING, STORAGE, OR USE OF MAJOR RECREATIONAL EQUIPMENT

For the purposes of this Ordinance, major recreational equipment is defined as including boats and boat trailers, travel trailers, pickup campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings, tent trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not. Major recreational equipment should be parked or stored in the off-street parking areas required in the individual zones. No major recreational equipment shall be parked or stored on any street or alley in a residential area to exceed twenty-four (24) hours.

SECTION 25.06 TEMPORARY HARDSHIP USE PERFORMANCE STANDARDS

- A. The Temporary Hardship Use shall be placed on a lot, inclusive of the primary dwelling site, having a minimum size of one (1) acre.
- B. Only one (1) Temporary Hardship Use shall be permitted on a lot having a minimum size of one (1) acre.
- C. The living quarters of the Temporary Hardship Use shall be occupied by either the dependent relative or by the family providing care.

- D. Dependency, for the purpose of the Temporary Hardship Use, shall mean medical dependency or physical or mental handicap. Dependency shall be determined by the Board of County Commissioners prior to issuance of a Building Permit.
- E. Failure to comply with the occupancy requirements of Section 25.06.C., and with the dependency requirement of Section 25.06.D., for a Temporary Hardship Use shall constitute a violation of Kootenai County Zoning Ordinance No. 11.
- F. The owner of the real property on which the Temporary Hardship Use is located shall be the Sponsor when making a request for a permit. If the living quarters of the Temporary Hardship Use is a manufactured home, the Sponsor shall also obtain a Manufactured Home Setting Permit.
- G. A written statement shall be provided by the Sponsor from a licensed physician stating the nature of the medical dependency or physical or mental handicap when making a request for a permit.
- H. It shall be the responsibility of the Sponsor to record a notice with the County Clerk and Recorder's Office stating that the Temporary Hardship Use, which is located on the property of Sponsor:
 - 1. Is temporary, and is to be removed upon termination of occupancy of either dependent relative or family providing care;
 - 2. Is temporary, and is to be removed upon sale or lease of property of the Sponsor;
 - 3. Provides living quarters for the dependent relative who is named in the permit; and
 - 4. Is not considered a use which is to be transferred with the property of the Sponsor when said property is sold or leased.

A copy of the recorded notice shall be submitted upon request by the applicant before the permit is issued.

- I. It shall be the responsibility of the Sponsor to file a release of the Notice required by Section 25.06.H., signifying that the Temporary Hardship Use has been concluded.
- J. It shall be the responsibility of the Sponsor to submit a statement stating that the location of the Temporary Hardship Use is not in conflict with any recorded, restrictive covenant or plat dedications upon request for a permit.
- K. Before issuance of the permit, it shall be the responsibility of the Sponsor to show proof of approval by Panhandle Health District I of a wastewater disposal system for the Temporary Hardship Use.

- L. The Temporary Hardship Use shall be exempted from the frontage requirements of the Agricultural zone, the Agricultural Suburban zone, the Restricted Residential zone and the Rural zone.
- M. The permit for a Temporary Hardship Use shall be renewed every two (2) years by the Sponsor. Compliance with Section 25.06 (Temporary Hardship Use Performance Standards) and compliance with the Manufactured Home Setting Permit shall be certified by the Sponsor at the time of renewal. Failure to renew the permit or permits within the stated time period shall constitute a violation of Kootenai County Zoning Ordinance No. 11.
- N. The Temporary Hardship Use shall be prohibited in the following zones:
 - Article 9 Commercial zone
 - Article 10 Light Industrial zone
 - Article 11 Industrial zone
 - Article 12 Mining zone
 - Article 14 High-Density Residential zone

ARTICLE 26

NONCONFORMING LOTS, NONCONFORMING USES OF LAND, NONCONFORMING
STRUCTURES, NONCONFORMING USES OF STRUCTURES AND PREMISES,
AND NONCONFORMING CHARACTERISTICS OF USE

SECTIONS:

- 26.01 INTENT
- 26.02 NONCONFORMING LOTS OF RECORD
- 26.03 NONCONFORMING USES OF LAND FOR LAND WITH MINOR STRUCTURES ONLY
- 26.04 NONCONFORMING STRUCTURES
- 26.05 NONCONFORMING USES OF STRUCTURES OR OF STRUCTURES AND PREMISES
IN COMBINATION
- 26.06 REPAIRS AND MAINTENANCE
- 26.07 (Deleted)
- 26.08 RESTORATION OF DWELLINGS ON NONCONFORMING LOTS

SECTION 26.01 INTENT

Within the zones established by this Ordinance or amendments that may later be adopted, there exists:

- A. Lots;
- B. Structures;
- C. Uses of land and structures; and
- D. Characteristics of use;

which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit these nonconformities to continue until they are removed. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zone.

Nonconforming uses are declared by this Ordinance to be incompatible with permitted uses in the zones involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of structure and land in combination, shall not be extended or enlarged after passage of this Ordinance or its amendments by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, of a nature which would be prohibited generally in the zone involved.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation, demolition, or removal of an existing

building has been substantially begun preparatory to rebuilding, such excavation, demolition, or removal, shall be deemed to be actual construction, provided that work shall be carried on diligently.

SECTION 26.02 NONCONFORMING LOTS OF RECORD

In any zone in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. This provision shall apply even though such lot fails to meet the requirements for acres or width, or both, that are generally applicable in the zone, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the zone in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board.

SECTION 26.03 NONCONFORMING USES OF LAND FOR LAND WITH MINOR STRUCTURES ONLY

Where, at the time of passage of this Ordinance, lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, and where such use involved no individual structure with a replacement cost exceeding \$1,000, the use may be continued so long as it remains otherwise lawful, provided:

- A. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
- B. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;
- C. If any such nonconforming use of land ceases for any reason for a period of more than six (6) months, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the zone in which such land is located;
- D. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

SECTION 26.04 NONCONFORMING STRUCTURES

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No such nonconforming structure may be enlarged or altered in such a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity;
- B. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than fifty (50) percent of its replacement cost at the time of destruction, it shall not be reconstructed, except in conformity with the provisions of this Ordinance;
- C. Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the zone in which it is located after it is moved.

SECTION 26.05 NONCONFORMING USES OF STRUCTURES OR OF STRUCTURES AND PREMISES
IN COMBINATION

If lawful use, involving individual structures with a replacement cost of \$1,000 or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this Ordinance that would not be allowed in the zone under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No existing structure devoted to a use not permitted by this Ordinance in the zone in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered, except in changing the use of the structure to a use permitted in the zone in which it is located.
- B. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.
- C. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may, as a special exception, be changed to another nonconforming use provided that the Board, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the zone than the existing nonconforming use. In permitting such change, the Board may require appropriate conditions and safeguards in accordance with the provisions of this Ordinance.
- D. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the zone, and the nonconforming use may not thereafter be resumed.
- E. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three (3) year period (except when government action impedes access to the premises), the structure, or

structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zone in which it is located.

- F. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this Section is defined as damage to an extent of more than fifty (50) percent of the replacement cost at the time of destruction.

SECTION 26.06 REPAIRS AND MAINTENANCE

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs; or on repair or replacement of walls, fixtures, wiring, or plumbing, to an extent not exceeding fifty (50) percent of the current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.

If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly-authorized official to be unsafe or unlawful by reason of physical condition, it shall not be thereafter restored, repaired, or rebuilt, except in conformity with the regulations of the zone in which it is located.

SECTION 26.07 (Deleted)

SECTION 26.08 RESTORATION OF DWELLINGS ON NONCONFORMING LOTS

Any dwelling located on a nonconforming lot may be restored or rebuilt to its original condition, provided the construction for such restoration or rebuilding is undertaken within six (6) months of the date of the loss and subject to the following conditions:

- A. The dwelling was legally constructed and a building permit was obtained therefore; and
- B. The dwelling is destroyed by natural or accidental causes.

ARTICLE 27
AMENDMENTS

SECTIONS:

- 27.01 ORDINANCE AND MAP MAY BE AMENDED
- 27.02 AMENDMENT TO TEXT OF ZONING ORDINANCE
- 27.03 CHANGE IN ZONING MAP—WHO MAY INITIATE ACTION
- 27.04 APPLICATION REQUIREMENTS FOR CHANGE IN ZONING MAP
- 27.05 COLLECTION OF FEE
- 27.06 AMENDMENTS TO BE IN HARMONY WITH COMPREHENSIVE PLAN
- 27.07 PUBLIC HEARING REQUIRED BY BOARD OF COUNTY COMMISSIONERS—
NOTICE
- 27.08 CLASSIFICATION OF NEW AND UNLISTED USES

SECTION 27.01 ORDINANCE AND MAP MAY BE AMENDED

This Zoning Ordinance, including the Map, may be amended, supplemented, changed, or modified from time to time, but all proposed amendments shall be submitted first to the Planning Commission for its recommendations, which recommendations shall be submitted to the Board of County Commissioners for its consideration.

SECTION 27.02 AMENDMENT TO TEXT OF ZONING ORDINANCE

An amendment to the text of the Zoning Ordinance may be initiated by the Commission, or by the Board, or by any citizen or taxpayer of Kootenai County. The Board may hold a public hearing on any such amendment, and in the case of an amendment initiated by a citizen or taxpayer, shall collect a fee from such citizen or taxpayer equal to the cost of necessary legal advertisement and notice. Such amendment may be adopted, with or without modification, by Ordinance of the Board, in accordance with the procedures specified herein.

SECTION 27.03 CHANGE IN ZONING MAP—WHO MAY INITIATE ACTION

Any citizen of Kootenai County, or owner of property in Kootenai County, may appear before the Commission and request the Commission to initiate action to change the Zoning Map. The Commission shall give due consideration to any and all such requests and may hold a formal public hearing to further consider the proposed change of the Zoning Map. The Commission and the Board may initiate action to change the Zoning Map.

SECTION 27.04 APPLICATION REQUIREMENTS FOR CHANGE IN ZONING

The owner or owners and/or contract buyers of any property or properties may petition, in writing, the Commission and may submit application for a change in the Zoning Map. The Commission shall give due consideration to any and all such requests and may hold a formal public hearing when considering the proposed change in the Zoning Map only after all requirements, as specified in Section 27.04.A., are met by the owner or owners requesting a change in the Zoning Map.

The application for a change of classification must show the following:

- A. The date the existing zoning became effective.
- B. The changed conditions which are alleged to warrant other or additional zoning.
- C. Facts to justify the change on the basis of advancing the public health, safety, and general welfare.
- D. The effect it will have on the value and character of adjacent property.
- E. The effect on the property owner or owners if the request is not granted.
- F. Such other information the Commission shall require.
- G. The effect it will have on the Comprehensive Plan.

SECTION 27.05 COLLECTION OF FEE

In the event that a public hearing is held, the Commission shall collect a fee from the owner equal to the cost of necessary legal advertisements and notices.

SECTION 27.06 AMENDMENTS TO BE IN HARMONY WITH COMPREHENSIVE PLAN

Before recommending an amendment to the Ordinance, it must be shown that such amendment is reasonably necessary, is in the best interest of the public, and is in harmony with the Comprehensive Plan adopted by the Board of County Commissioners. Failure on the part of the Planning Commission to make recommendations within sixty-five (65) days from the date of receipt of the petition by the County Planner, shall be deemed to constitute approval of such proposed amendment unless a longer period is granted by the Board of County Commissioners.

SECTION 27.07 PUBLIC HEARING REQUIRED BY BOARD OF COUNTY COMMISSIONERS—NOTICE

Amendments to this Ordinance and Map may be adopted only after a public hearing has been held in relation thereto before the Board of County Commissioners in which parties in interest and citizens shall have an opportunity to be heard. Notice complying with relevant provisions of the Idaho Code shall be provided.

SECTION 27.08 CLASSIFICATION OF NEW AND UNLISTED USES

It is recognized that new types of land use will develop and forms of land use not anticipated may seek to locate in Kootenai County. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use shall be made as follows:

- A. The Administrator shall make a determination whether the requested use is similar to or a lesser form of a permitted or conditional use of the particular zone. If an affirmative determination is made, all performance

standards, hearing requirements, and other provisions of this Ordinance or any other applicable Ordinance shall be met. If determined that the request is a new or unlisted use, the Administrator shall refer the question to the Commission requesting an interpretation as to the zoning classification into which such use should be placed. The referral of the use interpretation question shall be accompanied by a statement of facts, provided by the Applicant, listing the nature of the use, including but not limited to, whether it involves dwelling activity, sales, processing, type of product, storage, and amount or nature thereof, anticipated employment, and the amount of noise, odor, fumes, dust, toxic material, and vibration likely to be generated.

- B. The Commission shall consider the nature and described performance of the proposed use and its compatibility with the uses permitted in the various zones and determine the type of zone within which such use should be permitted.
- C. The Commission shall transmit its findings and recommendations to the Board as to the classification proposed for any new or unlisted use.
- D. The Board shall consider the recommendations of the Commission and amend the Ordinance as described in this Section.

ARTICLE 28
ADMINISTRATION AND ENFORCEMENT

SECTIONS:

- 28.01 INTERPRETATION
- 28.02 PERMITS REQUIRED
- 28.03 ENFORCEMENT
- 28.04 VIOLATIONS
- 28.05 PENALTIES
- 28.06 ADMINISTRATIVE EXCEPTION
- 28.07 SCHEDULE OF FEES

SECTION 28.01 INTERPRETATION

In the interpretation and application of the provisions of this Ordinance, the requirements will be held to be minimum requirements. This Ordinance is adopted in compliance with Idaho Code for the purpose of promoting the Health, Safety, and General Welfare of the citizens of Kootenai County and the State of Idaho.

When this Ordinance imposes a greater restriction upon the use of buildings or premises, or requires larger spaces than are imposed by other codes, laws, resolutions, rules and regulations, or covenants, the provisions of this Ordinance shall control. The provisions of this Ordinance shall be so interpreted as to carry out the purpose and intent of the zones as shown on the Official Zoning Maps on file in the Planning Commission Office, this Ordinance as adopted, and the Kootenai County Comprehensive Plan.

SECTION 28.02 PERMITS REQUIRED

All permits for construction, alteration, or for occupancy, shall be processed in compliance with the Kootenai County Building Code Ordinance No. 90 and subsequent amendments.

A. Certificate of Occupancy

1. It shall be unlawful to use or occupy, or permit the use or occupancy, of any building or premises, or both, or part thereof thereafter created, erected, changed, converted, or wholly or partly altered, or enlarged in its use or structure until a Certificate of Occupancy shall have been issued therefor.
2. The Board of County Commissioners may attach specific conditions to any Certificate of Occupancy permit for the purpose of ensuring compliance with the requirements and intent of this Ordinance and the protection of public health and safety.
3. The request for a Certificate of Occupancy will state the proposed use of the building and/or the land, that the use conforms to the requirements of this Ordinance, and with any or all conditional provisions that may have been imposed, and shall be accompanied by approval signatures of those agencies having jurisdiction over the use or structure.

B. Building Permit - It shall be unlawful to construct, alter, move, demolish, repair, or use any building or structure within Kootenai County,

except in compliance with the Kootenai County Building Code Ordinance No. 90 and subsequent amendments. All work authorized by a building permit shall be completed within one (1) year from the date of issuance of such permit. All permits expire after a period of one (1) year unless a longer period of time is authorized in writing by the Building Department.

SECTION 28.03 ENFORCEMENT

It shall be the duty of the Building Official and/or the Planning Director or their duly-authorized agents to enforce this Ordinance. The Building Official shall issue no permits unless intended uses of the buildings and land conform in all respects with the provisions of this Ordinance.

SECTION 28.04 VIOLATIONS

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Administrator. The Administrator shall properly record such complaint, immediately investigate, and take action thereon as provided by this Ordinance.

SECTION 28.05 PENALTIES

The Prosecuting Attorney shall, in addition to taking whatever criminal action deemed necessary, take steps to civilly enjoin any violation of this Ordinance. Penalties for failure to comply with or violations of the provisions of this Ordinance shall be as follows:

Violation of any of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor. Each day such violation continues shall be considered a separate offense. The landowner, tenant, subdivider, builder, or any other person who commits, participates in, assists in, or maintains such violation may be found guilty of a separate offense. Nothing herein contained shall prevent the Board or any other public official or private citizen from taking such lawful action as is necessary to restrain or prevent any violation of this Ordinance or of the Idaho Code.

SECTION 28.06 ADMINISTRATIVE EXCEPTION

An Administrative Exception, not to exceed one (1) foot of any dimensional requirement pertinent to front, side, rear, and flanking streets setbacks may be granted by administrative action of the Administrator without public notice and without public hearing.

SECTION 28.07 FEES SET BY RESOLUTION

The Board of County Commissioners shall adopt by resolution a "Fee Schedule of the Kootenai County Planning and Zoning Department." Said schedule shall contain, but not be limited to, fees for zoning appeals and applications for variances, conditional use permits, zoning amendments, and planned unit developments. Fees for other applications, including those of other Ordinances administered by the above department may be added, as deemed necessary by the Board of County Commissioners.

ARTICLE 29
BOARD OF ADJUSTMENT AND HEARING EXAMINER:
ESTABLISHMENT AND PROCEDURE

SECTIONS:

- 29.01 ESTABLISHMENT OF BOARD OF ADJUSTMENT AND HEARING EXAMINER
- 29.02 PROCEEDINGS OF THE BOARD OF ADJUSTMENT
- 29.03 HEARING APPEALS; NOTICE

SECTION 29.01 ESTABLISHMENT OF BOARD OF ADJUSTMENT AND HEARING EXAMINER

- A. The Board of Adjustment is hereby established, which shall consist of five (5) members, all of whom shall be residents of and taxpayers in Kootenai County, and one of whom shall be a member of the Commission. They shall be appointed by the Board. The first such Board of Adjustment shall be appointed two (2) for terms of one (1) year, two (2) for terms of two (2) years, and one (1) for a term of three (3) years, all of which terms, except that of the Commission Member, shall be determined by lots. All appointments thereafter shall be for a term of three (3) years, with the member from the Commission to be appointed so that he shall serve during his tenure on the Commission. Any Board of Adjustment member may be removed at any time by a majority vote of the Board of County Commissioners. Members shall be selected without respect to political affiliation and shall serve without compensation; provided, however, that actual and necessary expenses shall be allowed.
- B. A Hearing Examiner may be appointed by the Board of County Commissioners. The Hearing Examiner shall have the same authority and duties as the Board of Adjustment and is hereby established pursuant to Idaho Code 67-6520. The Hearing Examiner shall be a planner, engineer, architect, or other professionally trained person, or shall have significant experience in the field of Planning and Zoning. The Hearing Examiner may be dismissed by a majority vote of the Board of County Commissioners.

SECTION 29.02 PROCEEDINGS OF THE BOARD OF ADJUSTMENT

The Board of Adjustment and Hearing Examiner shall adopt by-laws and rules of procedure, hold meetings, and maintain records of all proceedings and actions as required by this Ordinance, Hearing Procedures Ordinance No. 58, and Idaho Code 67-6504 or subsequent amendments of those documents.

SECTION 29.03 HEARING APPEALS; NOTICE

Appeals concerning interpretation or administration of this Ordinance may be taken by any person aggrieved. Such appeals shall be filed within a reasonable time, not to exceed sixty-five (65) days, by filing with the Administrator a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the Board of Adjustment or Hearing Examiner all papers constituting the record upon which the action appealed was taken.

The Administrator shall fix a reasonable time, not to exceed sixty-five (65) days, for the hearing of the appeal and give legal public notice thereof, as well as due notice to the parties in interest. The Board of Adjustment or Hearing Examiner shall decide the same within a reasonable time, which shall not exceed thirty (30) days following the hearing. At the hearing, any affected party may appear in person or by agent or attorney.

ARTICLE 30
BOARD OF ADJUSTMENT AND HEARING EXAMINER:
POWERS AND DUTIES

SECTIONS:

- 30.01 ADMINISTRATIVE REVIEW
- 30.02 CONDITIONAL USES
- 30.03 VARIANCES; CONDITIONS GOVERNING APPLICATIONS; PROCEDURES
- 30.04 PROCEDURES FOR GRANTING VARIANCES

The Board of Adjustment or Hearing Examiner shall have the following powers and duties:

SECTION 30.01 ADMINISTRATIVE REVIEW

To hear and decide appeals where it is alleged there is error in any order, requirement, recommendation, or determination made in the enforcement of this Ordinance.

SECTION 30.02 CONDITIONAL USES

A. General Provisions:

1. The Board of County Commissioners will review the recommendations of the Board of Adjustment or Hearing Examiner and act within twenty (20) working days after receiving its recommendation.
2. The following conditional uses, because of their public convenience and necessity, may be permitted only after finding that the conditional use proposed will be in conformance with the Comprehensive Plan and will be in the public interest.
3. Permits for conditional uses shall stipulate restrictions or conditions which may include: a definite time limit, provisions for front, side, and rear yard setbacks greater than the minimum standards, suitable landscaping, sight restrictions, or safeguards to uphold the spirit and intent of this Ordinance. Permits may be suspended or revoked by the Board of County Commissioners after a finding at a public hearing by the Board of Adjustment or Hearing Examiner that a permittee has failed to comply with such restrictions or conditions.
4. Public Utility Complex Facilities, existing on January 3, 1973 (the date of adoption of Kootenai County Zoning Ordinance No. 11), are exempt from Conditional Use Permit requirements. Creation of new facilities, or expansion of existing facilities, must comply with the provisions of this Ordinance.

B. Procedures:

The Board of Adjustment or Hearing Examiner shall be authorized to hear and make recommendations on only such requests for Conditional Uses as it

is specifically authorized to pass on by the terms of this Ordinance; to decide such questions as are involved in determining whether requests for Conditional Uses should be recommended; and to recommend approval of requests for Conditional Uses and with such conditions and safeguards as are appropriate under this Ordinance, or to recommend denial of requests for Conditional Uses when not in harmony with the purpose and intent of this Ordinance. A Conditional Use shall not be approved unless and until:

1. A written application for a Conditional Use Permit is submitted indicating the Article of this Ordinance under which the Conditional Use is sought and stating the grounds on which it is requested;
2. Notice shall be provided as required by the Idaho Code for applications for Special Use Permits;
3. The public hearing shall be held. Any party may appear in person, or by agent or attorney;
4. The determination has been made that the granting of the Conditional Use Permit will not adversely affect the public interest.

SECTION 30.03 VARIANCES; CONDITIONS GOVERNING APPLICATIONS; PROCEDURES

To authorize upon appeal, in specific cases, such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

No nonconforming use of neighboring land, structures, or buildings in the same zone, and no permitted or nonconforming use of lands, structures, or buildings, in other zones shall be considered grounds for the issuance of a variance.

SECTION 30.04 PROCEDURES FOR GRANTING VARIANCES

- A. Notice of public hearing shall be given as required by relevant Idaho Code provisions.
- B. The public hearing shall be held. Any party may appear in person or by agent or by attorney.
- C. The following findings shall be made:
 1. whether or not the requirements of Section 30.03 have been met by the applicant for a variance;
 2. whether or not the reasons set forth in application justify the granting of a variance;
 3. that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure;

4. that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- D. In recommending the granting of any variance, the Board of Adjustment or Hearing Examiner may recommend appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Article 27 of this Ordinance.

ARTICLE 31
PROCESS OF APPEAL

It is the intent of this Ordinance that all appeals involving interpretation and enforcement shall first be presented to the Board of Adjustment or Hearing Examiner, whose recommendation shall be forwarded to the Board of Commissioners, and that recourse from the decision of the Board of Commissioners shall be to the courts as provided by law.

ARTICLE 32
SEVERABILITY CLAUSE

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect; and to this end the provisions of this Ordinance are hereby declared to be severable.

ARTICLE 33
CONDITIONAL USE STANDARDS

SECTIONS:

- 33.01 SLAUGHTERHOUSE, RENDERING PLANT
- 33.02 GUN CLUBS, RIFLE RANGES, ARCHERY RANGES
- 33.03 GOLF COURSES AND DRIVING RANGES
- 33.04 COMMERCIAL FUR FARMS
- 33.05 COMMERCIAL RESORT
- 33.06 MANUFACTURED HOME AS A RESIDENCE ON LESS THAN 5 ACRES
- 33.07 AGRICULTURAL PRODUCTS SALES STORE
- 33.08 RENTAL WAREHOUSE
- 33.09 ANIMAL CLINICS OR ORPHANAGES, HOSPITALS, BOARDING KENNELS AND RUNS, OR SCHOOLS
- 33.10 AUTO WRECKING YARD, JUNK YARD, AUTOMOTIVE REPAIR FACILITY
- 33.11 SAWMILLS, SHINGLE FOR PLANING MILLS, WOODWORKING USE
- 33.12 RETIREMENT, CONVALESCENT, SHELTER, AND NURSING HOMES - FOR 9 PERSONS OR MORE
- 33.13 RADIO AND TELEVISION TOWERS
- 33.14 OUTDOOR THEATERS
- 33.15 AIRPORTS AND LANDING FIELDS
- 33.16 OUTDOOR ADVERTISING STRUCTURES
- 33.17 CEMENT, GYPSUM, OR ASPHALT PLANT - STORAGE AND MANUFACTURING
- 33.18 EXPLOSIVE STORAGE AND MANUFACTURING
- 33.19 RACE TRACKS
- 33.20 FEED LOTS
- 33.21 GROUP HOUSING
- 33.22 PRIVATE RESORT (NON-PROFIT)
- 33.23 TENNIS COURTS, RACQUET CLUBS, SOFTBALL FIELDS, BASEBALL FIELDS, AND SOCCER FIELDS
- 33.24 ABOVE-GROUND BULK STORAGE OF OVER TWENTY THOUSAND (20,000) GALLONS (PER SITE) OF PETROLEUM PRODUCTS
- 33.25 PUBLIC UTILITY COMPLEX FACILITY
- 33.26 WHOLESALE GREENHOUSE
- 33.27 RESTRICTED SURFACE MINING
- 33.28 DAY CARE CENTER
- 33.29 MANUFACTURED HOME PARKS

SECTION 33.01 SLAUGHTERHOUSE, RENDERING PLANT

ZONES PERMITTED: Agricultural, Industrial, Light Industrial

- A. Minimum area - five (5) acres.
- B. All such facilities shall be designed and located with full consideration to their proximity to adjacent residential zones and uses and especially to the reduction of such nuisance factors as odors, dust, or fumes.
- C. All such uses shall be a minimum of one thousand (1,000) feet from any residential zone classification.
- D. Shall be five hundred (500) feet from any dwelling, except an owner's dwelling.
- E. On-site commercial, retail sales of products manufactured or processed on the site may be permitted with conditions.

SECTION 33.02 GUN CLUBS, RIFLE RANGES, ARCHERY RANGES

ZONES PERMITTED: Agricultural, Agricultural Suburban, Rural

- A. Minimum area - ten (10) acres.
- B. Target areas shall be six hundred (600) feet from any existing dwelling and three hundred (300) feet from any property line.
- C. All facilities shall be designed and located with full consideration to the safety factors involved with such a use.
- D. Off-street parking for all patrons will be provided.
- E. A site plan shall be submitted with the application.
- F. One on-premise sign shall be allowed and limited to thirty-two (32) square feet, in addition to all such warning or precautionary signage which may be necessary to ensure safety. All such signage shall be shown on the site plan.

SECTION 33.03 GOLF COURSES AND DRIVING RANGES

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, High Density Residential

- A. Minimum area - fifteen (15) acres.
- B. No commercial use other than those related to the sale or rental of golf equipment or associated food and beverage sales.
- C. Lighting shall be screened to produce no glare upon public rights-of-way or adjacent properties.
- D. The permit will be subject to approval of a traffic and development plan showing access, structures, and parking areas.
- E. Advertising shall consist of one (1) sign that shall not exceed twelve (12) square feet in area, and located twenty-five (25) feet from the public right-of-way.

SECTION 33.04 COMMERCIAL FUR FARM

ZONES PERMITTED: Agricultural, Rural

- A. Minimum area - twenty (20) acres
- B. All animals and runs will be housed in permanent buildings, not less than one hundred (100) feet from any dwelling other than the dwelling of the owner.
- C. The operator of such a use will maintain adequate housekeeping practices to prevent the creation of a nuisance.

SECTION 33.05 COMMERCIAL RESORT

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, Rural, High Density Residential

- A. Minimum area - five (5) acres
- B. Activities Permitted - Must be compatible with the recreational activities of a resort and may include outdoor facilities for swimming, boat launching, boat rentals, fishing, hunting, camping, picnicking, skiing, snowmobiling, lawn tennis, volleyball, badminton, golf, and horseback riding. Other outdoor activities not specified may be permitted only if the activities are a part of the operation of a resort.
- C. Limited Commercial Uses Permitted - May include: Convenience food store, restaurant, bar, retail fuel service, recreational vehicle park (Section 9.11 Performance Standards), motel, hotel, camping facility, laundry facility, retail sales shops for sporting equipment, souvenirs, and art and handicraft items.

Limited commercial use permitted in a commercial resort must meet the required setbacks and standards for uses in the appropriate zone. Limited commercial uses are permitted as accessory uses and are incidental to the overall operation of the resort.

- D. Prohibited Uses - General commercial wholesale and retail sales and services not associated with the activities of a commercial resort are prohibited.
- E. The Board of County Commissioners may attach such reasonable conditions as the record indicates may be necessary to visually screen, control dust, manage traffic, buffer adjoining uses, or to mitigate effects on water and air quality.

SECTION 33.06 MANUFACTURED HOME AS A RESIDENCE ON LESS THAN 5 ACRES.

ZONES PERMITTED: Restricted Residential, Agricultural Suburban

The minimum lot size, setback, lot coverage, and other requirements of the zone for single-family dwellings shall be applicable.

SECTION 33.07 AGRICULTURAL PRODUCTS SALES STORE

ZONES PERMITTED: Agricultural, Rural

- A. Minimum area - five (5) acres.
- B. No other commercial activity is permitted, such as sales of general farm machinery.
- C. Will contain provisions for processing and sales of agricultural products, such as grains, fertilizers, feeds, vegetables and fruits. Sales of such items and hand tools, and gardening products will be permitted.
- D. No processing activity is permitted that would employ more than five (5) persons.

- E. All buildings must be six hundred (600) feet from any dwelling other than the dwelling of the owner.
- F. Sight obscuring fencing will be required around any and all storage areas.
- G. No advertising structures are permitted except a (1) sign less than twelve (12) square feet in area attached flat against a building.

SECTION 33.08 RENTAL WAREHOUSE

ZONES PERMITTED: Agricultural, Rural

- A. Minimum area - five (5) acres.
- B. Security fencing, six (6) feet minimum height, around all structures.
- C. No outdoor storage or commercial sales of any kind.
- D. No outdoor advertising except a (1) sign less than twelve (12) square feet attached flat on a building.
- E. All lighting will be confined to the premises and will produce no glare on adjacent properties or rights-of-way.

SECTION 33.09 ANIMAL CLINICS OR ORPHANAGES, HOSPITALS, BOARDING KENNELS AND RUNS, OR SCHOOLS

ZONES PERMITTED: Agricultural, Rural

- A. Minimum area - five (5) acres.
- B. All animals will be housed in permanent structures which can be physically enclosed during nighttime hours.
- C. All buildings and fenced running areas will be a minimum of three hundred (300) feet from any existing dwelling other than the dwelling of the owner.
- D. The operator of such a use will maintain adequate housekeeping practices to prevent the creation of a nuisance.

SECTION 33.10 AUTO WRECKING YARD, JUNK YARD, AUTOMOTIVE REPAIR FACILITY

ZONES PERMITTED:

For Auto Wrecking/Junk Yard: Agricultural, Light Industrial, Industrial, Rural

For Automotive Repair Facility: Agricultural, Rural

- A. Minimum area - as required by zone.
- B. A sight-obscuring fence must be constructed around the entire storage area a minimum of six (6) feet high and/or vegetative screening to ensure obscured visibility from neighboring properties and for the travelling public.

- C. No materials, parts, automobiles, or junk will be visible from any public right-of-way.
- D. A performance bond may be required for assurance of compliance with the provisions of this conditional use, said bond will be renewable every two (2) years after inspection of the premises determines the advisability of such a renewal.
- E. Repair activities are limited to automotive repair of passenger vehicles and automobiles. No other engines, machinery, equipment, may be repaired, nor shall repair include body work, paint spraying, and fabrication.

SECTION 33.11 SAWMILLS, SHINGLES OR PLANING MILLS, WOODWORKING USE

ZONES PERMITTED: Agricultural, Rural

- A. Minimum area - ten (10) acres.
- B. All buildings must be located one thousand (1,000) feet from any residence, residential plat, or residential zone, other than the dwelling of the owner.
- C. All facilities must meet air quality standards applicable at the time of issuance of this permit.
- D. All facilities must meet the requirements and be approved by the appropriate fire district. Facilities will not be approved if not located in a fire district.
- E. All facilities will be designed and located on the site with full consideration given to their proximity to adjacent uses, their effect upon adjacent property, and to the reduction of noise, odor, dust and traffic.

SECTION 33.12 RETIREMENT, CONVALESCENT, SHELTER, AND NURSING HOMES - For 9 persons or more.

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, Rural, High Density Residential

- A. Minimum area - three (3) acres.
- B. No advertising structures or signs, except one (1) sign less than six (6) square feet in area.
- C. Adequate fencing around the entire complex must be provided.

SECTION 33.13 RADIO AND TELEVISION TOWERS

ZONES PERMITTED: Agricultural, Rural, Agricultural Suburban

Minimum area shall be adequate to ensure that the tower will not adversely impact or damage neighboring property if a structural failure occurs.

SECTION 33.14 OUTDOOR THEATERS

ZONES PERMITTED: Agricultural, Agricultural Suburban, Commercial, Rural

- A. A sight-obscuring fence will be required around the entire complex.
- B. The facilities will be designed with full consideration given to any surrounding residential uses.
- C. A traffic control plan will be approved by the Planning Director.

SECTION 33.15 AIRPORTS AND LANDING FIELDS

ZONES PERMITTED: Agricultural, Rural

- A. Minimum area - forty (40) acres.
- B. The facilities shall be designed and located with full consideration given to the proximity of residential zones and to the safety considerations.
- C. The facilities must be located two thousand (2,000) feet from any residential zone.

SECTION 33.16 OUTDOOR ADVERTISING STRUCTURES

ZONES PERMITTED: Agricultural, Commercial

- A. The structure will not be unduly detrimental to the characters of the surrounding area.
- B. The structure will not be within one thousand (1,000) feet of any other outdoor advertising structure.
- C. The use shall terminate if this property or surrounding property within five hundred (500) feet is reclassified into a residential classification.

SECTION 33.17 CEMENT, GYPSUM, OR ASPHALT PLANT - STORAGE AND MANUFACTURING

ZONES PERMITTED: Industrial

- A. Minimum lot area - five (5) acres.
- B. The operator of such a use shall furnish a suitable guarantee (bond) that the activity or process in question will not constitute a nuisance or be detrimental to the health, safety, comfort or welfare of persons residing in the area, working or passing by such a proposed use. Said guarantee will be renewed each two (2) years providing the operation is not in violation of this Ordinance.

SECTION 33.18 EXPLOSIVE - STORAGE AND MANUFACTURING

ZONES PERMITTED: Industrial, Rural

- A. Minimum area - ten (10) acres.
- B. The operator of such a use shall furnish a suitable guarantee (bond) that the activity or processing in question will not constitute a nuisance or be in any way detrimental to the health or safety of persons residing in the area, working, or passing by such a proposed use. Said guarantee will be renewed each two (2) years providing the operation is not in violation of this Ordinance.

SECTION 33.19 RACE TRACKS

ZONES PERMITTED: Agricultural, Rural

- A. Minimum area - twenty (20) acres.
- B. All uses will be a minimum of one thousand (1,000) feet from any residential zone.
- C. All uses and facilities will be designed and located with full consideration to their proximity to adjacent uses, especially to the reduction of nuisance factors, such as noise, smoke, and dust.
- D. One (1) parking space will be provided for each three (3) seating spaces and said parking area will be provided with a security type fence and a suitable dust prevention type of road surfacing.

SECTION 33.20 FEED LOTS

ZONES PERMITTED: Agricultural

- A. Minimum area - fifteen (15) acres.
- B. All lots shall be fenced with a five (5) foot high fence.
- C. All lots shall be located more than one thousand (1,000) feet from any residential zone or five hundred (500) feet from any residence.
- D. All lots shall provide a minimum of two hundred (200) square feet of lot area per animal.

SECTION 33.21 GROUP HOUSING

ZONES PERMITTED: Agricultural, Agricultural Suburban, Rural, High Density Residential

- A. Minimum area - one (1) acre.
- B. Building will have a minimum of one thousand five hundred (1,500) square feet plus two hundred (200) feet of floor space for each person.

SECTION 33.22 PRIVATE RESORT (NONPROFIT)

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, Rural, High Density Residential

- A. Will contain provisions for private, nonprofit, outdoor recreational uses which will be limited to, but may include areas for group meetings, boating, camping, swimming, picnicking and may also include living facilities.
- B. Adequate access and parking will be required.
- C. All facilities will be adequately screened from adjacent residential uses.

SECTION 33.23 TENNIS COURTS, RACQUET CLUBS, SOFTBALL FIELDS, BASEBALL FIELDS, AND SOCCER FIELDS

ZONES PERMITTED: Agricultural Suburban

- A. Minimum area - two (2) acres.
- B. Permit will be subject to approval of a detailed site plan showing activity areas, traffic circulation, access, structures, parking areas, fencing, and landscaping.
- C. Lighting of the site shall be screened to produce no glare upon public rights-of-way or adjacent properties.
- D. Advertising shall consist of a (1) sign that shall not exceed twelve (12) square feet in area and located twenty-five (25) feet from the public right-of-way.
- E. No commercial uses other than those related to the sale or rental of equipment or associated food and beverage sales.

SECTION 33.24 ABOVE-GROUND BULK STORAGE OF OVER TWENTY THOUSAND (20,000) GALLONS (PER SITE) OF PETROLEUM PRODUCTS.

ZONES PERMITTED: Light Industrial, Industrial

- A. Minimum area - five (5) acres.
- B. Setbacks for all petroleum storage facilities shall be in accordance with current fire and safety codes and shall not be less than fifty (50) feet from any property line.
- C. All such facilities shall be contained with a sight-obscuring fence not less than six (6) feet in height or sight obscuring evergreen trees or compact hedge not less than six (6) feet in height. All landscaping will require adequate sprinkling systems and proper maintenance.
- D. All such uses shall be located and/or designed with full consideration to their proximity to adjacent uses, their effect upon adjacent property, and to the reduction of inherent dangerous factors.
- E. All such facilities (including structure and storage tanks) within three hundred (300) feet of any residential zone shall have a maximum vertical height of forty (40) feet.

- F. All such facilities shall conform to the standards prescribed by the National Fire Protection Association, the American Petroleum Institute, and other authorities having jurisdiction, whichever regulations are more restrictive.

SECTION 33.25 PUBLIC UTILITY COMPLEX FACILITY

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, Commercial, Light Industrial, Industrial, Mining, Rural, High Density Residential

- A. Minimum area - None.
- B. Lot coverage by buildings shall not exceed thirty-five (35) percent of the total lot area.
- C. In considering applications the Board of Adjustment/Hearing Examiner shall consider the public convenience and the necessity of the facility. The Board of Adjustment/Hearing Examiner will also consider any adverse effect that the facility will have upon properties in the vicinity and may require such reasonable restrictions or conditions of development or protective improvements as to uphold the purpose and intent of the Zoning Ordinance and the Comprehensive Plan.
- D. Specified conditions, with respect to emissions of noise, particulate matter, or vibrations, may be prescribed differently from those required in a given zone, so as to be compatible with other applicable State and Federal standards.

SECTION 33.26 WHOLESALE GREENHOUSE

ZONES PERMITTED: Agricultural, Agricultural Suburban, Rural

- A. Minimum area - as required by zone.
- B. Direct retail sales are allowed, but only to the extent that they are occasional and incidental. The following factors shall be considered in determining whether or not retail sales are occasional and incidental:
1. Square footage devoted to retail sales shall not exceed five hundred (500) square feet.
 2. Retail sales shall be limited to products grown on the premises.
 3. Advertising for retail sales shall be ancillary to advertising for wholesale operations.
- C. Yard setbacks:
1. Front Yard.....40 feet
 2. Side Yard.....25 feet
 3. Rear Yard.....25 feet
- D. Any outdoor storage areas shall be surrounded by sight-obscuring fences or densely planted shrubbery or trees, to a minimum height of six (6) feet.

E. A traffic circulation and parking plan meeting the requirements of Section 10.09 of the Kootenai County Zoning Ordinance shall be submitted for approval by the County Engineer.

F. Drainage and runoff shall be controlled and contained on-site.

SECTION 33.27 RESTRICTED SURFACE MINING

A. Zones Permitted - Restricted Surface Mining may be permitted with a conditional use permit in the Agricultural, Industrial, and Rural zones.

B. All Surface Mining Operations, for which conditional use permit application is made in Kootenai County, shall meet the requirements of Idaho Code (Title 47, Chapter 15, Surface Mining), and the following requirements:

1. Applicants for a conditional use permit for surface mining shall submit a site plan(s) showing the following, where applicable:

(a) Boundaries of the proposed site.

(b) Location of the proposed mining operation on the site.

(c) All proposed and existing structures.

(d) All watercourses, streams, ponds, or lakes on the proposed site or within one thousand (1,000) feet of the boundaries of the site.

(e) All proposed and existing roads which would provide access to the proposed site.

(f) A topographic vicinity map showing the proposed site and its relationship to the surrounding area.

(g) Approximate location of all existing residential uses within one thousand (1,000) feet of the site boundaries.

C. A conditional use permit for a surface mining operation may be granted for a period not to exceed five (5) years, and may be renewed for a period up to five (5) additional years. The quantity of excavated materials may also be limited as necessary to protect adjoining lands and natural resources. Extension requests shall be reviewed and approved, if justified, by the Board of County Commissioners.

D. The mining site access road into a street shall meet the requirements of the appropriate highway district and such conditions as may be specified by the Board of County Commissioners.

E. All surface mining conditional use Applicants will be required to submit rehabilitation plans to the State of Idaho and to Kootenai County. In addition to the requirements of the Rehabilitation Plan required by the State, the Rehabilitation Plan shall contain the following additional information:

1. A topographic map of affected area:
 - (a) Prior to excavation.
 - (b) After excavation is complete.
 2. How placement of overburden during the duration of the permit will be managed.
- F. The Board of County Commissioners may attach such reasonable conditions as the record indicates may be necessary to visually screen, control dust, manage traffic, buffer, air quality, and the visual environment surrounding the proposed surface mining activity.
- G. Even though a conditional use permit may be granted for surface mining activity, no overburden removal shall begin until all required State permits have been issued, and until all necessary documentation required for the County conditional use permit has been provided by the Applicant and approved by County administrative personnel.

SECTION 33.28 DAY CARE CENTER

ZONES PERMITTED: Agricultural, Agricultural Suburban, Restricted Residential, Rural, High Density Residential

- A. A site plan shall be submitted showing existing or proposed improvements, including fencing, playground area, etc.
- B. Parking and/or traffic circulation plan shall be submitted. Traffic shall not cause congestion.

SECTION 33.29 MANUFACTURED HOME PARKS

ZONES PERMITTED: High Density Residential

- A. Minimum area - not less than twelve thousand (12,000) square feet and with adequate access on a public street, when accompanied by a plan that incorporates the following:
 1. A Manufactured Home Park shall provide stalls or spaces for each manufactured home unit of not less than two thousand five hundred (2,500) square feet.
 2. Laundry and convenience related services may be provided for the use of the tenants of the park only.
- B. Manufactured Home Parks shall be designed to the following standards:
 1. Seventy (70) percent of each manufactured home stall or site shall be left in open space.
 2. Each manufactured home shall be located at least twenty-five (25) feet from any park property line.
 3. A manufactured home may not be located closer than twenty (20) feet from any other manufactured home or permanent building within the

manufactured home park. A manufactured home accessory building shall not be closer than ten (10) feet from a manufactured home or building on an adjacent lot.

4. Each manufactured home lot within a manufactured home park shall have direct access to a park street. The park street shall consist of an unobstructed area of twenty (20) feet wide and shall be well-marked to provide for continuous traffic flow. The street system shall have direct connection to a public road.
5. Streets and walkways designed for the use of the manufactured home park residents shall be lighted during the hours of darkness.
6. Every manufactured home, lot, stall, or manufactured home site shall provide for two (2) off-street parking areas of not less than two hundred (200) square feet in each area. Said parking spaces shall not be further than two hundred (200) feet from such lot.
7. Each manufactured home lot (site) shall be provided with utility connections, ground anchors, piers or pads, and stabilizing connections of sufficient size to properly accommodate the manufactured home placed on the site.
8. Water supplies for fire department operations shall be as required by the authority having jurisdiction. Where there are no such requirements, water supplies shall be adequate to permit the effective operation of minimum hose stream flows and duration of flows as required by NFPA Standard #501A for manufactured home parks, on any fire in a manufactured home or elsewhere in the manufactured home park. Hydrants shall be located within five hundred (500) feet of all manufactured home lots (sites) unless otherwise specified.

ARTICLE 34
REPEAL OF CONFLICTING ORDINANCE PROVISIONS
REENACTMENT OF REMAINING ORDINANCE PROVISIONS
EFFECTIVE DATE

This Ordinance hereby repeals all Kootenai County Zoning Ordinance provisions and/or amendments from and after the adoption of Ordinance No. 11 to the extent that Ordinance No. 11 and its subsequent amendments conflict with this Ordinance. All remaining provisions of Ordinance No. 11 and its amendments, to the extent that they do not conflict with the provisions of this Ordinance, are hereby reenacted with their effective dates relating back to the date of their initial adoption. All new provisions, including the reenacted provisions of prior Zoning Ordinances, shall take effect and be in full force, in the form and organization represented in this Ordinance, upon its passage, approval, and publication in one (1) issue of The Coeur d'Alene Press.

Approved as an Ordinance of Kootenai County, Idaho, on the 29th day of AUGUST, 1990, upon a roll call vote of the Board of County Commissioners, wherein the following votes were cast:

Commissioner Haakenson
Commissioner Adams
Chairman Henderson

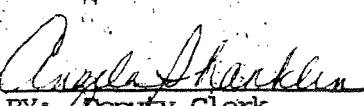
AYE
ABSENT
AYE


Frank N. Henderson, Chairman

ATTEST:

SHIRLEY A. DETTZ, CLERK

Evalyn R. Adams, Commissioner


BY: Deputy Clerk


Robert M. Haakenson, Commissioner

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO

IN THE MATTER OF THE APPLICATION OF)	CASE NO. PUD-037-99,
BLACK ROCK INVESTMENTS FOR APPROVAL)	FINDINGS OF FACT,
OF THE CLUB AT BLACK ROCK, A PLANNED)	COMPREHENSIVE PLAN
UNIT DEVELOPMENT ON 674 ACRES OF LAND)	ANALYSIS, CONCLUSIONS OF
IN THE RURAL AND RESTRICTED)	LAW AND ORDER OF DECISION
RESIDENTIAL ZONES)	

I COURSE OF PROCEEDINGS

- 1.01 The Planning Department issued a notice of Public Hearing on this application (PUD-037-99) to be held December 13, 1999. Public notice requirements set forth in *Idaho Code* have been met. On November 26, 1999, notice was published in the *Coeur d'Alene Press*. On December 6, 1999, notice was posted at the site. It is the Applicant's responsibility to notify all property owners within 300 feet of the project site. Based on the signed affidavit, the requirements for public notification have been met.
- 1.02 The Planning Commission heard this request at a public hearing on December 13, 1999. At said hearing, persons were asked for testimony relative to the request. The hearing was continued to a date certain of January 19, 2000.
- 1.03 The Planning Commission reconvened on January 19, 2000. With four members present, the Commission voted unanimously to recommend that the request for Case No. PUD-037-99 be approved.
- 1.04 The Planning Department issued a notice of Public Hearing on this application (PUD-037-99) to be held on March 1, 2000. Public notice requirements set forth in *Idaho Code* have been met. On February 15, 2000, notice was published in the *Coeur d'Alene Press*. On February 23, 2000, notice was posted at the site. It is the Applicant's responsibility to notify all property owners within 300 feet of the project site. Based on the signed affidavit, the requirements for public notification have been met.
- 1.05 The Board of County Commissioners heard this request at a public hearing on March 1, 2000. At said hearing, the Board received a recommendation from the Planning Commission to approve Case No. PUD-037-99, and persons were asked for testimony relative to the request.
- 1.06 A legally noticed site visit was conducted by the Board of County Commissioners on March 20, 2000.
- 1.07 At their deliberations on March 29, 2000, the Board of County Commissioners further considered the case. Upon review of all files, exhibits, and testimony of current record regarding said application, the Board makes the follow Findings of Fact and Conclusions.
- 1.08 Files and exhibits relative to this application are available for review in the Kootenai County Planning Department.

II FINDINGS OF FACT

- 2.01 **Applicant(s).** The Applicant is Black Rock Investments, Inc., P.O. Box 977, Wheat Ridge, Colorado 80034.
- 2.02 **Owner(s).** The property owner is CAG Investments L.L.C., P.O. Box 977, Wheat Ridge, Colorado 80034.

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EXHIBIT

B

2.03 **Proposal.** The Applicant is proposing to construct an 18 hole public golf course, clubhouse/restaurant, pro shop/grill, equestrian center, recreational center with swimming pool and tennis courts, convenience store, leasing office, and other related structures and uses along with a maximum of 204 single family dwellings and a maximum of 177 high-density residential units, to be platted through the County's subdivision process. The high-density homes may consist of zero lot line homes, condominiums, timeshares and/or pooled units.

2.04 **Phasing.** The Applicant's narrative states that the proposal has been divided into 2 Phases, to be completed as follows:

Phase One: Site disturbance will begin in the spring of 2000. Development of the golf course is anticipated to begin in the spring of 2001, and it will take approximately two years for the seeding of the fairways and greens to be complete. During this phase, Clubhouse Drive will be constructed and underground sewer and water lines will be installed. Successive roadways will be constructed and paved as they are developed to accommodate residential construction. Heavy truck traffic is anticipated during construction, therefore improvements to Loffs Bay Road and Rockford Bay Road are proposed to be completed once the golf course opens. The construction of the fire station will be concurrent with the clubhouse. The sales office and maintenance building will also be constructed during this phase.

The overall project density is approximately 1.8 acres per home site using the calculation of 381 living units and 674 acres.

Phase Two: Residential development will begin in Phase Two. The Applicant's narrative states that 20 to 50 residential units will be constructed each year for 7- 10 years. The convenience store is expected to be completed during this phase. The recreation center and the equestrian center will also be included in this phase.

2.05 **Existing Structures.** There are no existing structures at the site.

2.06 **Location and Legal Description.** The site is described as an area of land situated on the north side of Rockford Bay, Lake Coeur d'Alene, which includes portions of Sections 8, 9, 16, and 17, all in Township 48 North, Range 4 West. B.M., Kootenai County, Idaho. The site is located off of Loffs Bay Road, approximately 1 mile east of its intersection with Rockford Bay Road and extends to the intersection of Black Rock Road and is bordered by Rockford Bay Road to the south. The individual parcel numbers for the land subject to this request are:

48N04W-08-6800	Section 8	Township 48 North	Range 4 West	40.00 acres
48N04W-08-8000	Section 8	Township 48 North	Range 4 West	167.08
48N04W-08-8600	Section 8	Township 48 North	Range 4 West	40.00
48N04W-08-9200	Section 8	Township 48 North	Range 4 West	50.00
48N04W-09-3970	Section 9	Township 48 North	Range 4 West	83.45
48N04W-09-4600	Section 9	Township 48 North	Range 4 West	67.63
48N04W-09-5800	Section 9	Township 48 North	Range 4 West	10.00
48N04W-09-6800	Section 9	Township 48 North	Range 4 West	80.00
48N04W-16-0900	Section 16	Township 48 North	Range 4 West	2.29
48N04W-16-2800	Section 16	Township 48 North	Range 4 West	79.40
48N04W-16-3650	Section 16	Township 48 North	Range 4 West	34.27
48N04W-17-0050	Section 17	Township 48 North	Range 4 West	10.00
48N04W-17-0075	Section 17	Township 48 North	Range 4 West	10.00

Total: 674.12 gross acres

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- 2.07 **Zoning.** The site and surrounding area is zoned both Rural and Restricted Residential. Of the total 674 acres at the project site, 538 acres are zoned Rural while the remaining 136 acres are zoned Restricted Residential.

The Zoning Ordinance, using calculations for both the Rural and Restricted Residential zones, will allow up to 704 single-family residences on the site, under the current zoning.

Minimum lot size requirements within a planned unit development can be redistributed. Section 15.04 of the Zoning Ordinance states, "The distribution of dwellings or other land uses within the Planned Unit Development shall not be affected by the zoning district boundaries."

- 2.08 **Physical Characteristics.** Most of the site is a gently rolling area, although the south side slopes off rapidly to Rockford Bay Road. The highest point is a grassy knoll in the middle of the property. Much of the site adjacent to Loffs Bay Road is an unforested, open field, partially cultivated with wheat. The rest of the site is forested. Interspersed throughout the site are steep drainage channels and wetland areas. The total relief (high point to low point) at the site is 500 feet.

The Soil Survey of Kootenai County Idaho identifies eight prevalent soil types on site. The open field areas contain mostly Santa silt loam and Taney silt loam, soils well suited to Douglas fir, ponderosa pine, western larch, lodgepole pine and western white pine. The available water capacity is moderate; permeability can be slow, resulting in a perched water table in the spring. Depending on the slope, runoff is medium to rapid; the hazard of erosion moderate to high. Limitations for home sites are the slow permeability of the soil and the seasonal perched water table. The primary limitations for the construction of roads are potential frost action damage and the inherent low support strength of the soil.

Lacy-Bobbitt association and Lacy-Rock outcrop complex soils are found in the steeper areas and are soils typically found in canyon areas and along escarpments. Limitations for homesites and roads are depth to rock, slope, and stoniness.

Blinn stony loam soil is found along the shoreline and has a high hazard of erosion. The Applicant will be working with the Idaho Department of Lands, Navigable Waters Division, to apply for an encroachment permit in an effort to protect and enhance shoreline development.

Shallow depth to rock and the presence of wetlands prohibit subsurface disposal of wastewater at the site.

The Applicant's environmental report states that previous development efforts in the 1980s included grading activities that resulted in recontoured areas with exposed subsoil and stockpiled topsoil. These areas have several deep and eroding gullies that are minimally vegetated.

- 2.09 **Noxious Weeds.** The site was visited in August 1999 by Sandy Daniel, Superintendent of Kootenai County Noxious Weed Control. Her site evaluation confirmed the presence of Canada thistle, Dalmatian toadflax and spotted knapweed. Ms. Daniel states that the current weed infestation is light considering the vastness of the site. Her recommendation is that treatment be required along the roadway during the development of the golf course and clubhouse to prevent the spread of spotted knapweed to other areas.
- 2.10 **Stormwater Plans and Review.** All site disturbing activity must be in compliance with Site Disturbance Ordinance No. 283. The Applicant's engineer has filed a preliminary stormwater drainage plan with the Planning Department.

Rand Wichman, Senior Planner, reviewed the stormwater plan. His comments are outlined in a memorandum dated November 18, 1999. He states that due to the sensitive nature of the soils at the site, a complete site disturbance plan will be required prior to any earthwork or construction being performed

at the site. The stormwater system will be required to be sized to treat runoff from the anticipated impervious areas on all lots within the development. He recommended that the Planning Commission consider requiring treatment of runoff from all irrigated areas of the golf course. In addition, an extensive geotechnical engineering evaluation will be necessary to address the seasonal high groundwater and the slope stability for the steeper portions of the site.

The Applicant responded in a letter dated November 24, 1999. The letter addresses the concerns raised by Mr. Wichman and states that a specific, detailed site disturbance plan that includes a geotechnical review and stormwater management plan will be prepared and submitted for review by the Planning Department after receiving preliminary approval of the planned unit development master plan. On November 5, 1999, the Applicant filed a Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General permit with the U.S. Environmental Protection Agency.

- 2.11 **Lakes, Rivers and Streams.** The site is located on Rockford Bay on the southwest side of Lake Coeur d'Alene. The site is located on the Coeur d'Alene Indian Reservation and is not included in the area mapped by the Federal Emergency Management Agency for flood zone purposes.
- 2.12 **Wetlands.** The Clean Water Act of 1975 was established to maintain and restore the physical and biological integrity of the waters of the United States. Section 404 of the Clean Water Act authorizes the Army Corps of Engineers to issue permits for the discharge of dredged or fill material into the waters of the U.S., which includes wetlands.

The Applicant requested a wetlands study to be done by Selkirk Environmental for the purpose of providing a detailed determination and delineation of the project area. This study has been completed and is a part of the file marked as Exhibit A19.

Selkirk identified twenty-two jurisdictional wetland areas at the site. Seven channelized drainages were identified and delineated as waters of the U.S.

On December 7, 1999, The Planning Department spoke with Gregg Raynor, Regulatory Project Manager, Army Corps of Engineers. He stated that the Applicant has filed some initial permits for wetland fills with the Corps. A letter outlining the recommendations and requirements from the Corps were available at the hearing and entered as an exhibit.

- 2.13 **Wildlife Habitat.** The site supports a diverse stand of wildlife, including a wide variety of birds. In a letter dated November 4, 1999, the Idaho Fish and Game Department states that while the proposal includes retention of open space and some natural cover, development of the site will clearly result in a reduction in the numbers and kinds of wildlife presently found. Also, the potential for human/wildlife conflicts will increase. The Department makes the following recommendations to help reduce the impact to wildlife:

- Maximize the retention of open, undeveloped space through clustering. A minimum ratio of 80% open space to 20% developed area.
- Avoid development in or adjacent to wetlands, stands of mature timber, stream corridors and waterfront areas.
- Maintain travel corridors for wildlife, particularly from upland areas to the lake. Any fences used should be designed to not limit movement of wildlife.
- Retain large trees at or near waterfront sites for use by bald eagles, ospreys, and other raptors.

The Department also expressed concern with regard to the production of sediment and increased stormwater runoff effecting water quality in the lake.

- 2.14 **Significant Historical and Cultural Sites.** This site is located within the boundaries of the Coeur d'Alene Reservation and is under the jurisdiction of the Coeur d'Alene Tribe. In a letter dated June 4, 1999, Ernest Stensgar, Chairman of the Tribe stated that the Tribe has no opposition to the project as proposed. In a subsequent telephone conversation with Alfred Nomee on November 8, 1999, the Tribe requested that any development activity at the site that should result in uncovering any archeological artifacts, temporarily cease and the Tribe be notified by phone.

In 1985, the University of Idaho completed an archeological reconnaissance of the proposed site. Their conclusions are included in a letter that states, in short, that it remains possible, but unlikely, that a subsurface cultural feature, such as a burial, may exist in the area.

- 2.15 **Comprehensive Plan Designation.** The Kootenai County Future Land Use Map designates the site and immediate area as Rural and Rural Residential land as well as a Surface Water Resource Area. The purpose of this designation is to provide a "country like" setting for residences with agricultural, timber, or open space environments, and to prevent the financial burden of providing infrastructure where it would be least beneficial. A Rural Area is defined as a sparsely settled area usually related to farming, forest management, or open space, that is distinct from settled communities. This designation may have some agriculture or timber production. The Rural designation is given to areas of the County which are not close to population centers and in areas where continued sparse settlement is encouraged due to the difficulty of providing services. Services and infrastructure are not expected to be improved in the near future.

Residential designations are given to areas where the primary use is residential. These residential areas are outside of a city's boundaries, but may have some of the services and amenities of a city. These locations often have distinguishable neighborhoods with community or homeowners' associations. Development in these areas requires improved infrastructure and services. The residential designations encourage a wide variety of residential uses within three density ranges: Rural Residential, Suburban Residential and Urban Residential. The Rural Residential areas commonly border Rural areas and may actually be Rural in appearance. Distinguishing these areas from those areas designated as Rural is the size of the existing parcels and the level of police and fire protection that can be provided.

The Future Land Use Map is not an attempt to define exact boundaries, but instead a general outline of areas of suitable projected land uses. There are no sharp breaks between boundaries, rather transitions that should be considered approximately ¼ mile wide.

The Future Land Use Map is intentionally general. Designations should be given to broad areas, not to individual sites. For most of the County, the minimum area to be considered for a separate designation should be approximately ½ square mile (320 acres).

- 2.16 **Surrounding Land Use.** Surrounding the proposed site, is an area that is open and sparsely populated. The majority of the parcels that lie to the north and east of the site are approximately 10 acres in size. Larger, unplatted 20 acre and larger parcels lie to the northeast; south of the site, along the shores of the lake and south of Rockford Bay Road, homesites are smaller, platted lots, most under an acre in size. The area is rural in nature, with few homes along Loffs Bay Road in view. Along Rockford Bay Road, the land use is typical of summer, lakeside homes.
- 2.17 **Area of City Impact.** The parcel is not located within an Area of City Impact.
- 2.18 **Distance to Services.** The nearest services are within 5 miles of the site, at the Rockford Bay Store and the Fighting Creek Store.

- 2.19 **Sewage Disposal.** The Applicant proposes that at completion, the development will be served by a Septic Tank Effluent Pumping (STEP) wastewater system. This system consists of individual septic tanks, wet wells and lift stations, four recirculating sand filters, an outside storage pond, and a 30-acre land application irrigation system.

Each lot owner will be responsible for individual septic pumping. Effluent from each septic tank will be gravity fed/ pumped with the aid of lift stations to a large collection or dosing tank. The effluent is then circulated three to four times through a 24-inch deep sand filter. The effluent is contained within the sand filter by a HDPE membrane and concrete floor. The effluent is then chlorinated and pumped to an outside pond for storage. The pond will be lined with a 60-mil thick liner, fenced, and designed to hold 12 million gallons of treated wastewater. Odor will be removed through the use of a vent pipe.

Residual odors are routed to a biofilter, filled with natural substances such as peat or soil. The system is being designed to accommodate 397 equivalent residence connections (ERs) at an average flow of 250 gallons per day for each.

During the winter months, the effluent will remain in the pond. In the spring of each year, DEQ will determine when land application may begin. It is anticipated that land application will be carried out from April through October through drip and spray irrigation.

It is projected that the treated effluent will reach disinfection levels of < 2.2 organisms per 100 ml. This will allow minimum 50 foot buffer zones for drip irrigation, and 100 foot minimum buffer zones for spray irrigation.

However, during Phase One, the Applicant states that temporary wastewater disposal facilities will provide service for sewage generated by the maintenance building, clubhouse, fire station and sales office. This may include some or all of the components of the STEP system. Land application is not anticipated during this phase, rather the effluent will remain in the pond. The Applicant has stated that they intend to use septic tanks and drainfields during Phase 1.

- 2.20 **Water.** The development is proposed to be served by a community water system. Domestic water and fire flow water will be supplied by wells located in the north area of the project. Two test wells have been drilled with a capacity in excess of 100 gallons per minute; additional wells will be added as the need arises. Water from the wells will be pumped into two 150,000-gallon reservoirs equipped with booster pumps to pressurize the distribution system.

Irrigation water will be provided by pumping water from Lake Coeur d'Alene to the ponds on the golf course. Dual irrigation pumps will be installed in the existing 12 inch casings at the lake frontage lot. Water will be pumped to the golf course ponds by an 8 inch distribution line.

The Department of Environmental Quality has approved sites for four drinking water wells. DEQ recommends:

- Storage capacity at 800 gallons per connection

- Total daily use without separate irrigation provisions - 1500 gallons per residence

- Total daily use with separate irrigation provisions - 800 gallons per residence

- Maximum instantaneous demand - 300 gpm

- Pressure tanks with a gross volume 10 times the capacity of the largest pump used to prevent pumps from cycling excessively

Since groundwater can be scarce, the use of potable water for irrigation should be discouraged

The Applicant is proposing that the water and sewer systems shall be maintained by the Association, authorized to act as a Water and Sewer System Control Committee.

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The Applicant has applied for and been granted assignment of a permit to appropriate water from the lake through the Department of Water Resources.

Concerns regarding the static levels of adjacent wells were raised at both public hearings and in public comment received during the application process. In an effort to mitigate those concerns, the Applicant has agreed to spend a maximum of \$10,000 to complete a baseline study of all wells located within 300 feet of the subject property. The details of this offer are outlined in a March 1, 2000 letter from the Applicant that is a part of the file.

- 2.21 **Air and Water Quality.** The Applicant is providing funding to the Worley Highway District to improve and pave approximately 2.25 miles of Loffs Bay Road. Loffs Bay Road is currently gravel. Roads within the Planned Unit Development will also be paved.

Water quality impacts can be reduced through the requirements of the Site Disturbance, the Army Corps of Engineers and the NPDES permit processes.

- 2.22 **Hazardous Areas.** This site was assessed by Budinger and Associates, a geotechnical engineering firm in Spokane. In a letter dated May 22, 1998, the firm reported that they had completed a Level I Environmental Site Assessment of the property. The letter states they did not find any evidence of adverse environmental conditions including heavy metal contamination.

Thirty-one of the 104 soil types in the County have inherently low support strength and are susceptible to slippage. Two of these soils, Santa and Taney (slope range from 5 - 20% and 3 - 25% respectively) are found at the site. With low support strength soils, the steeper the slopes, the greater the hazard of slippage. In their natural state, such soils are often stabilized by vegetation.

- 2.23 **Access and Transportation.** The site is primarily accessed off of Loffs Bay Road and is under the jurisdiction of the Worley Highway District. Three approaches into the development will exist on the south side of Loffs Bay Road. There will be a main approach to the clubhouse and golf course, a northwest subdivision entrance and an entrance to the parking lot for the wastewater treatment facility. Three approaches lie to the north of the road - one to the convenience store, one to the mini-storage, and one to the fire station. Two secondary approaches exist on Rockford Bay Road. One ingress/egress into the southern portion of the subdivision and one to the south of Rockford Bay Road, to the lake access portion of the parcel. In a letter dated August 10, 1999 the District states that the Board of Highway Commissioners will require all of the approaches to be professionally designed to safely accommodate the projected traffic.

According to their letter, the Highway District Commissioners will require that 1.2 miles of Rockford Bay Road and 2.25 miles of Loffs Bay Road be reconstructed to the current Highway Standards for Associated Highway Districts, Kootenai County, Idaho. A variance from the standards on the width of the travel surface from 28 feet to 24 feet will be granted, although two-foot shoulders will still be required. Pavement will be a requirement on both roadways. The District will administer the design and construction of the project.

The District proposes two separate contracts for the improvements. The first contract would be for the improvements to Loffs Bay Road, minus the pavement. The second contract would be for the improvements to Rockford Bay Road, including pavement and paving of Loffs Bay Road.

Clubhouse Drive will be built to highway district standards and with a 28 foot width; other roads within the development will be built to highway district standards with exception for the width, which is proposed to be 24 feet. The road to the lake side portion of the site will also meet highway district

standards with the exception of width (20 feet) and a grade of 10%. All roads will be privately maintained by the Board of Directors of the Association.

The Idaho Transportation Department has been notified of the proposal and to date no letter of comment has been received. ITD has plans to reconstruct the intersection of Rockford Bay Road and Highway 95. Those plans include turn lanes at that intersection.

- 2.24 **Fire Protection.** The area is under the protection and jurisdiction of the Worley Fire District. In a letter dated August 12, 1999, the District states that the development will have 300,000 gallons of domestic water storage for firefighting use. The hydrant system capable of supplying this water will be capable of flowing 2500 gpm for 120 minutes. According to the Applicant's engineer, hydrants will be set as the roads are developed.

Access roads within the development will meet or exceed the District's standards for width, surface and grade. Cul-de-sacs must meet a 70 foot diameter and all buildings must be no higher than two stories above ground.

The Applicant has agreed to convey by deed a lot within the subdivision which will house a new fire station, complete with parking areas, all utilities and a payment of \$150,000 to be used to purchase and equip the new station. The Applicant has agreed that construction of the fire station shall commence concurrently with the clubhouse. Conveyance by deed requires that the Applicant file a subdivision application with the Planning Department, contingent upon approval by the Board of County Commissioners.

- 2.25 **Schools.** This subdivision will be served by Coeur d'Alene School District #271. On July 1, 1999, the District commented on the proposal with a projected build out of 300 homes. Their letter outlines the major concerns of the District which include design considerations that provide safe places for children to walk, ride and wait for school buses. They stated that designated school bus stops should be incorporated into the design of the development and delineated on the master plan. The Applicant has stated that the master plan will be revised to replace the trash compound with a bus stop at the commercial portion of the site indicated for a trash compound.

- 2.26 **Solid Waste.** Property owners in Kootenai County are responsible for providing solid waste pickup for a project both during and after construction. The original master plan for the entire project includes an area designated as a trash compound site, although the Applicant has recently indicated to the Planning Department a preference for trash pick-up service at each individual building. If the compound were built, it would consist of dumpsters for trash and roll off containers for recyclables, the size and number to be determined by the demands of the development.

The master development plan indicates that the compound area will be located just east of the intersection of Loffs Bay Road and Black Rock Road. This area lies within the 6.92-acre site that is under consideration for a zone change from Rural to Commercial.

In a letter dated October 12, 1999, the Kootenai County Solid Waste Department) gives their recommendations for waste disposal. These recommendations include the proper disposal of construction and land clearing debris as well as garbage disposal once residential construction begins. They also request that the Applicant provide containers for recycling.

- 2.27. **Landscaping and Design Standards.** The Zoning Ordinance has specific standards for landscaping, parking, and screening of all commercial and community use structures. Proposals are reviewed against these standards at the building permit stage.

- 2.28 **Lighting.** The Zoning Ordinance requires that a Conditional Use Permit be applied for and granted prior to erecting any outdoor lighting for recreational facilities. The Planning Department has provided lighting standards obtained from The Illuminating Engineering Society of North America as requirements to be used by the Applicant in designing a lighting plan for the development.
- 2.29 **Signage.** Signs are prohibited in the Rural and Restricted Residential zones. The Applicant has proposed signage for the development. All signs requested must be included in the exhibits entered at the public hearings.
- 2.30 **Lake Access.** The lakeside portion of the parcel is proposed to be for day use by boaters and picnickers. There will be a dock, but no boat slips. The closest boat launch is at the Rockford Bay Marina, southwest of the site. A sales and leasing office will be located at this site.

III APPLICABLE LEGAL STANDARDS

- 3.01 Kootenai County Subdivision Ordinance No. 26-B
- 3.02 Kootenai County Zoning Ordinance No. 159, as amended
Article 15, Planned Unit Development
- 3.03 Kootenai County Building Ordinance No. 221-A
- 3.04 Kootenai County 1994 Comprehensive Plan
- 3.05 Kootenai County Site Disturbance Ordinance No. 283
- 3.06 Kootenai County Road Naming and Addressing Ordinance No. 229-B

IV COMPREHENSIVE PLAN ANALYSIS

Goal 1: Maintain and improve air quality

- While development of any kind will generate more pollutants into the air as traffic increases, the paving requirements of the Highway District will reduce dust and particulate matter now being generated by local traffic on gravel and dirt roads.

Goal 2: Maintain the existing high quality of groundwaters in Kootenai County

- Development at the site will undoubtedly have an impact on the existing groundwaters. However, development that includes a geotechnical review and stormwater management plan will assist in lessening the negative impacts on groundwater quality. A wastewater treatment facility in lieu of individual drainfields lessens the impact to groundwater supplies.

Goal 3: Ensure that demand of groundwater resources does not exceed sustainable yield

- The use of lake water rather than potable water for irrigation will help to conserve groundwater supplies. Clustered housing conserves water used for irrigation purposes.

Goal 4: Preserve, protect, and enhance the water quality and quantity of lakes, streams, rivers, and wetlands

- Mitigation through the implementation of erosion control and on-site stormwater treatment will help to limit the flow of untreated stormwater into the lake.
- Development in wetlands must be restricted to ensure that wetlands continue to function as filters/purifiers to groundwaters, as recharge areas to surface and groundwaters, and are allowed to retain their ability to reduce the adverse effects of flooding.
- Designating environmentally sensitive areas and requiring safeguards for these areas will ensure development will occur in areas less susceptible to contamination.
- The use of greenbelts provide buffer strips that protect surface waters and wetlands.

Goal 5: Encourage the preservation, protection and enhancement of native vegetation

- Noxious weeds are injurious to crops, livestock, and public health. In an effort to protect the environment and promote sensible development, the Planning Department works in conjunction with the Kootenai County Noxious Weed Department to ensure that noxious weed mitigation be a consideration in all current land use applications. The Applicant has stated intent to maintain native vegetation and will be working with the Noxious Weed Department to eliminate noxious weeds at the site.

Goal 6: Encourage the preservation, protection, and enhancement of fish and wildlife habitat

- The Applicant's narrative lists a variety of wildlife and fowl habitats at the site: grasslands, woodlands, wetlands. Development requirements set forth by the Board of County Commissioners will include coordination efforts with wildlife management agencies. In addition, provisions for setbacks from riparian areas will protect fish habitats. Fish and Game have identified specific areas as that are most likely to provide shelter for the area's wildlife. A commitment to providing and protecting these areas will support this goal.

Goal 7: Prevent or limit development activity in hazardous areas

- The Applicant's geotechnical report will include soils and slopes not conducive to development. Restricting development in these areas and requiring a site disturbance plan to control erosion will ensure that Goal 7 is met.

Goal 9: Develop land use regulations that protect property rights, maintain quality of life, provide adequate land for development, buffer non-compatible land uses, and protect the environment

- The soils, topography, and climate in this area have, in the past, allowed for sustainable farming practices. However, farming in the area has declined, population centers are shifting and citizens are looking for more housing and recreational areas.

Goal 10: Guide population growth to allow for inevitable expansion without sacrificing the environment or the quality of life which currently characterizes Kootenai County

- A large scale development, such as is proposed, in the Loffs Bay - Black Rock area will indelibly change the character and living style of the residents now living there. That change must be accomplished without sacrificing the quality of life in the area.
- A maximum number of living units will be established with the approval of the PUD master plan. The number recommended by the Planning Commission and adopted by the Board of County Commissioners reflect a genuine interest in balancing the Applicant's request with the desire of the community and neighborhood.
- In an effort to control over illumination at the site, recommendations for lighting standards set by The Illuminating Engineering Society of North America have been incorporated into this Order of Decision.

Goal 11: Provide safe, adequate, and affordable housing for people of all income levels

- The proposal presents a range of home styles and prices built to a standardized Building Code.

Goal 12: Promote a diversified, safe, and stable economic base in an environmentally responsible manner

- The project will provide opportunities for economic benefits to the area in the form of increased employment and revenues generated through the construction of the development.

Goal 13: Maintain viable agricultural, forestry and mining land uses

- Farming practices at the site have been abandoned for the past decade.

Goal 14: Provide for the efficient, safe and cost-effective movement of people and goods

- The Worley Highway District has reviewed the Applicant's request and responded with requirements that are expected to support this goal. The Idaho Transportation Department has recognized the need for turn lanes and widening of Highway 95, even before this proposal was submitted. This request encourages the development of public roads. Approaches will be limited to what is indicated on the plat.

Goal 16: Provide efficient, convenient, and effective government services

- A portion of the site will house a fire station and provide funds for equipment for the Worley Fire District. The Fire District and the Applicant have agreed that the fire station is to also be used for community purposes, on a permission-first basis from the District. A community use facility would support the Comprehensive Plan's objective of optimizing public investment and providing direct, coordinated services to the public.

Goal 17: Ensure efficient and effective police, fire, and emergency services

- Adequate water supplies shall be provided for fire suppression

Goal 18: Assist in the efficient and orderly expansion and improvements of public utilities and services

- An additional fire station in the area will maximize a public investment as it provides a service to all homes/citizens in the area.

Goal 19: Ensure the availability and affordability of energy-related services while protecting the environment

- The Kootenai County Building Department will ensure all structures are built to be Northwest Energy Code compliant.

Goal 20: Protect water quality to ensure adequate quantity and quality of drinking water to meet the current and future needs in the County

- See Goals 2 and 3.

Goal 21: Provide environmentally sound, efficient, and cost effective management of wastes

- Since the placement of all construction debris is prohibited in the County's rural collection system, arrangements will need to be made for the disposal and recycling of all construction and land clearing debris. The operation of the planned unit development will generate refuse and recyclables that will need to be separated for proper pickup and disposal. Environmental protection from unsafe solid waste disposal practices can be accomplished by the Applicant through working with the Kootenai County Solid Waste Department. Recycling of all land clearing and construction debris, aluminum, newspapers and cardboard is a step towards an environmentally sound development

Goal 22: Provide for school representatives to participate in the community planning process

- The Coeur d'Alene School District has been given the opportunity to provide comments regarding the increase in the numbers of school children expected at the time of full build-out. The safety of school children is a serious consideration in a development the size of this one. In order to ensure a safe place for children to wait for the school bus, a bus stop shall be incorporated into the development plan and delineated on the final PUD master plan. The Planning Director and School District 271 shall approve this bus stop.

Goal 23: Develop quality County parks, greenbelts, and recreational facilities to meet the diverse needs of a growing population

- The central theme of the Applicant's proposal is an 18-hole golf course. Shoreline development will include a day use picnic area.

Goal 24: Secure waterfront and near-shore areas for beneficial public uses and enhance public enjoyment of county waterways

- The proposal includes development of a lakeside public area, which includes a dock.

Goal 25: Encourage the preservation, protection, and enhancement of areas that are historically and culturally significant

- The State Historical Preservation Office and the Coeur d'Alene Tribe record all artifacts that are unearthed during excavation/construction both inside and outside the boundaries of the Coeur d'Alene Reservation. The Applicant has contacted the Coeur d'Alene Tribe and has agreed to notification in the event of the discovery of any historical or culturally significant items.

Goal 26: Foster growth in a manner that does not compromise the visual qualities of Kootenai County

- Deliberate placement of structures within building envelopes make the best possible use of the topography at the site.

Goal 27: Preserve, protect, and enhance natural landmarks and areas of scenic beauty, such as waterways and unique landscapes

- The developer has made a commitment to incorporate the unique landscape of the site into the design of the golf course and subdivision. CC&Rs to be recorded with the PUD master plan can help assure adherence to this commitment. In addition, the Covenants and CC&Rs can protect the landscape from the visual pollution caused by unnatural color schemes.

Goals 8 and 15 are not applicable.

V CONCLUSIONS OF LAW

- 5.01 Article 15 of Kootenai County Zoning No. 159, as amended, specifies the General Provisions and Procedures for reviewing requests for Planned Unit Developments. Based on the analysis and findings herein, it is concluded that the request is in harmony with the purpose and intent of the Zoning Ordinance and is in conformance with the specific requirements of Idaho Code and the Zoning Ordinance, as well as the intent of the 1994 Comprehensive Plan. The project is in the public interest and will not adversely effect the public interest.
- 5.02 The construction and operation of the project will satisfy the performance standards set forth in the Zoning Ordinance (Article 15 and Article 17) and Site Disturbance Ordinance No. 283. The zoning at the site is in accordance with the request. Full consideration has been given to the proximity of adjacent uses and the effect of the proposal on adjacent property. The construction and operation of the project will also be required to conform to all other applicable regulatory requirements, including those of the Panhandle Health District, the Division of Environmental Quality, the Worley Highway District, the Worley Fire District and the Idaho Transportation Department prior to issuance of certificates of occupancy or commencement of operations.
- 5.03 The public convenience and necessity will be served by the project with the improvements made to the road system, the addition of a fire station, the increase in jobs in the area and the enhancement of bare, unimproved land through landscaping and a viable stormwater plan.
- 5.04 The proposal is in conformance with the goals, objectives and policies of the 1994 Kootenai County Comprehensive Plan, as discussed more fully herein.

- 5.05 The future land use designations were chosen and defined in consideration of both the environmental conditions and the goals of the 1994 Comprehensive Plan. This proposal has been found to be in conformance with the Comprehensive Plan and the Future Land Use Map.
- 5.06 The Kootenai County Board of County Commissioners finds this request meets the requirements of Idaho's Local Land Use Planning Act.
- 5.07 These conclusions are based on a thorough analysis of the applicable legal standards contained in Section III of this Order and all of the evidence and testimony presented in these proceedings.

ORDER OF DECISION

Based upon the Findings of Fact and Conclusions of Law set forth in this document, the Kootenai County Board of County Commissioners hereby recommends that Case No. PUD-037-99, a request by Black Rock Investments for a Planned Unit Development be **APPROVED** with the following conditions:

VI CONDITIONS OF APPROVAL

- 6.01 In the event that any artifacts are found during excavation or construction, all work efforts at the immediate site shall cease and the Coeur d'Alene Tribe Office shall be notified within 24 hours.
- 6.02 Prior to recordation of the PUD master plan, the Applicant shall provide:
- A letter from the Planning Department stating approval of a stormwater management plan sized to meet the needs of the development at full build out;
 - An engineered geotechnical evaluation of the site, particularly addressing the seasonal high groundwater table and slope stability;
 - A contract with a solid waste source that addresses the disposal of all construction and land clearing debris. This contract will include provisions for recycling all debris that is eligible. The Applicant may choose between a private hauler or make arrangements to drop off their refuse at the Kootenai County Solid Waste Department;
 - Design and delineation on the PUD master plan with acceptance by the Planning Director and School District 271 of a bus stop for school children;
 - Construction drawing approval from the appropriate agencies.
- 6.03 Prior to the Planning Department's signature on the Certificate of Occupancy for the clubhouse, the Applicant shall provide:
- A contract that includes the disposal and recycling of all refuse generated as a result of normal day to day operations within the planned unit development. If a trash compound site is designated, this contract shall include recommendations with regard to the number of dumpsters, roll off containers and frequency of pickup service. Roll off containers for aluminum, newspaper, cardboard and magazines shall be permanently located at the trash compound. All containers must have tight fitting lids to prevent scattering and scavenging. The trash compound shall be screened with a 6 foot high sight obscuring fence that meets the architectural control style outlined in the Architectural Control Rules and Regulations, Item 2.5. A building permit indicating Planning Department approval shall be required prior to the placement of the fence. In the event of individual garbage pickup service,

- a letter from a service provider that a contract has been entered into which includes recycling provisions;
- A letter confirming that a contract has been entered into with the Noxious Weed Department or that treatment has been applied to the areas infested with knapweed along the roadway;
 - A letter of approval from the Worley Fire District stating that the District's requirements have been met, including the construction of a new fire station, funds to equip that station, and the existence of adequate water supplies for fire suppression;
 - A letter from the Worley Highway District stating that the District's requirements have been met, including the paving of Loffs Bay Road and the improvements to Rockford Bay Road;
 - Clubhouse Drive shall be paved;
 - Construction and release of all bonding for infrastructure improvements for Phase One.
- 6.04 A monument sign consisting of natural materials shall be allowed at the main entrance to the development. The sign shall meet the setbacks indicated on the site plan. The lighting for the sign shall be included in the overall lighting plan provided by the Applicant to the Planning Director. The Applicant shall obtain approval from the Planning Director prior to the application for a building permit and shall comply with all UBC requirements for signage.
- 6.05 Phase 1 of the development shall commence upon recordation of the final master plan and after receiving any necessary permits including Army Corp of Engineers permits. Phase 1 and all related structures shall be completed no later than December 31, 2003. Phase 2 construction of structures shall commence upon recordation of the subdivision mylar and after receiving any necessary permits. Platting and infrastructure developments for Phase 2 shall be completed by December 31, 2010. One, 1-year extension for a subdivision application may be requested by the Applicant upon demonstrating just cause.
- 6.06 All retail sales within the clubhouse, recreational center and concession located at lake front, are limited to small ticket items and confectioneries directly associated with the facilities' use in which they are located.
- 6.07 The following structures shall be restricted to the maximum size, location and appearance as depicted in the master plan and the exhibits submitted at the public hearing, except that the convenience store shall be located south of Loffs Bay Road and within the visual perimeter of the PUD:
- Clubhouse/Restaurant
 - Pro-shop/grill
 - Recreational facility
 - Convenience store
 - Maintenance facilities
 - Fire station
 - Equestrian center
 - Sales office
- 6.08 Any proposed changes to the associational by-laws, covenants, conditions and restrictions, and architectural rules and regulations shall require the approval of the Planning Director and shall be recorded with the Kootenai County Recorder's office.

- 6.09 Specific standards for parking, lighting, landscaping and screening will be applied, as required in Article 17 of the Zoning Ordinance, at the time the building permit for any structure is applied for. In addition, all public-parking areas not associated with a building must be paved.
- 6.10 A Conditional Use Permit shall be applied for and approved prior to the placement of any recreational lighting. Any outdoor lighting proposed, including streetlights, shall be delineated in a lighting plan and approved by the Planning Director prior to placement and use.
- 6.11 The Applicant shall be in full compliance with all development requirements set forth in this document for the planned unit development prior to the first application submitted for preliminary subdivision approval.
- 6.12 Prior to Board approval of the master plan, all requirements as outlined in Article 15 for a planned unit development must be fulfilled.
- 6.13 All design restrictions set forth in Section 2 of the Architectural Control Rules and Regulations shall be adhered to or as otherwise amended.
- 6.14 All commercial and residential structures shall obtain a Certificate of Occupancy from the Kootenai County Building Department prior to occupancy.
- 6.15 All roads inside the project area will be built to highway district standards as provided in Section 2.23 of this Order, except for width. The roads may be constructed in their respective residential phases.
- 6.16 Signs shall be limited to a monument sign incorporated into the design of the main entrance, as indicated on the master site plan. No signs shall be allowed except for any aforementioned or any approved at the public hearings as a part of the exhibits submitted. Directional signs are excluded from this requirement. Directional signs are unlighted, less than 8 square feet in area and are provided for directional rather than advertising purposes only.
- 6.17 All amendments to the PUD or subsequent applications for subdivision applications shall be governed by the ordinance(s) in effect at the time of the application.
- 6.18 Any site disturbance within the delineated wetland areas or within any of the drainage channels on the site shall require approval from the Army Corps of Engineers. This includes enhancement of the wetland areas.
- 6.19 The Applicant shall, at all stages of the project, minimize construction development in or adjacent to wetlands, stands of mature timber, stream corridors and waterfront areas. In addition, the project will maintain travel corridors for wildlife, particularly from upland areas to the lake. Any fences used should be designed to not limit movement of wildlife. The Applicant shall retain all large trees at or near waterfront sites for use by bald eagles, ospreys, and other raptors.
- 6.20 In designing the water system(s) for the development, the Applicant shall comply with the recommendations in the Department of Environmental Quality's April 30, 1999 letter that is a part of the file.
- 6.21 All structures shall be no higher than two stories and cul-de-sacs design must meet the requirements of the fire district.
- 6.22 Recordation of the master plan must take place within 120 days of the Board of County Commissioners' approval of the master plan.

- 6.23 The project's 2.29 acre lakeside portion of the proposal (parcel number 48N04W-16-0900) depicted on the master plan as the location of the sales and leasing office and beachfront recreation area shall be fenced on north, east and west sides and have a security gate off of Rockford Bay Road that will allow controlled access to the site. Activity at the site shall be limited to the hours of 6:00 a.m. to 9:00 p.m.

DATED this 10th day of May, 2000

ATTEST:
DANIEL J. ENGLISH, CLERK

Rebecca A. Bridgman
BY: Deputy Clerk

BY ORDER OF THE KOOTENAI COUNTY
BOARD OF COMMISSIONERS

Richard Panabaker
Richard Panabaker, Chairman

Dick Compton
Dick Compton, Commissioner

Ronald D. Rankin
Ronald D. Rankin, Commissioner

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO
MODIFIED ORDER OF DECISION**

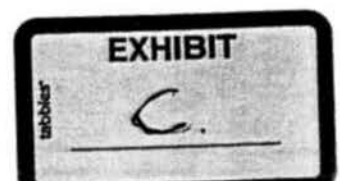
IN THE MATTER OF THE APPLICATION OF)
BLACK ROCK INVESTMENTS FOR APPROVAL)
OF THE CLUB AT BLACK ROCK, A PLANNED)
UNIT DEVELOPMENT ON 674 ACRES OF LAND)
IN THE RURAL AND RESTRICTED)
RESIDENTIAL ZONES)

CASE NO. PUD-037-99,
FINDINGS OF FACT,
COMPREHENSIVE PLAN
ANALYSIS, CONCLUSIONS OF
LAW AND ORDER OF DECISION

I COURSE OF PROCEEDINGS

- 1.01 The Planning Department issued a notice of Public Hearing on this application (PUD-037-99) to be held December 13, 1999. Public notice requirements set forth in *Idaho Code* have been met. On November 26, 1999, notice was published in the *Coeur d'Alene Press*. On December 6, 1999, notice was posted at the site. It is the Applicant's responsibility to notify all property owners within 300 feet of the project site. Based on the signed affidavit, the requirements for public notification have been met.
- 1.02 The Planning Commission heard this request at a public hearing on December 13, 1999. At said hearing, persons were asked for testimony relative to the request. The hearing was continued to a date certain of January 19, 2000.
- 1.03 The Planning Commission reconvened on January 19, 2000. With four members present, the Commission voted unanimously to recommend that the request for Case No. PUD-037-99 be approved.
- 1.04 The Planning Department issued a notice of Public Hearing on this application (PUD-037-99) to be held on March 1, 2000. Public notice requirements set forth in *Idaho Code* have been met. On February 15, 2000, notice was published in the *Coeur d'Alene Press*. On February 23, 2000, notice was posted at the site. It is the Applicant's responsibility to notify all property owners within 300 feet of the project site. Based on the signed affidavit, the requirements for public notification have been met.
- 1.05 The Board of County Commissioners heard this request at a public hearing on March 1, 2000. At said hearing, the Board received a recommendation from the Planning Commission to approve Case No. PUD-037-99, and persons were asked for testimony relative to the request.
- 1.06 A legally noticed site visit was conducted by the Board of County Commissioners on March 20, 2000.
- 1.07 At their deliberations on March 29, 2000, the Board of County Commissioners further considered the case. Upon review of all files, exhibits, and testimony of current record regarding said application, the Board made Findings of Fact and Conclusions of Law and signed the Order of Decision on May 10, 2000.
- 1.08 In August 2000 the Applicant applied for modifications to the Order of Decision. After proper notice, the Planning Commission heard the request on September 20, 2000. The Planning Commission recommended approval of the proposal with modifications.
- 1.09 On December 13, 2000, the Board of County Commissioners held a public hearing on the request and received the Planning Commission's recommendation. Upon review of all files, exhibits, and testimony of current record regarding said application, the Board makes the following Findings of Fact and Conclusions of Law.

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II FINDINGS OF FACT

- 2.01 **Applicant(s).** The Applicant is Black Rock Investments, Inc., P.O. Box 977, Wheat Ridge, Colorado 80034.
- 2.02 **Owner(s).** The property owner is CAG Investments L.L.C., P.O. Box 977, Wheat Ridge, Colorado 80034.
- 2.03 **Proposal.** The Applicant is proposing to construct an 18 hole public golf course, clubhouse/restaurant, pro shop, equestrian center, recreational center with swimming pool and tennis courts, leasing office, and other related structures and uses along with a maximum of 381 single family dwellings including 177 high-density residential units, to be platted through the County's subdivision process. The high-density homes may consist of zero lot line homes, condominiums, timeshares and/or pooled units.
- 2.04 **Phasing and Development Schedule.** The Applicant's narrative states that the proposal has been divided into 2 Phases, to be completed as follows:

Phase One: Phase 1 consists of golf course construction with the associated maintenance buildings and clubhouse, a sales office, swimming pool and tennis courts, and platting of approximately 300 residential units. A wastewater treatment plant, fire station, and other infrastructure to support the development are also included in this phase.

Phase Two: Phase 2 consists of the remainder of the residential units and the equestrian center. Phase 2 is located in the western end of the development.

Development Schedule. The Applicant has submitted a development schedule that contains estimated start and completion dates for the major parts of the development.

- 2.05 **Existing Structures.** There are no existing structures at the site.
- 2.06 **Location and Legal Description.** The site is described as an area of land situated on the north side of Rockford Bay, Lake Coeur d'Alene, which includes portions of Sections 8, 9, 16, and 17, all in Township 48 North, Range 4 West. B.M., Kootenai County, Idaho. The site is located off of Loffs Bay Road, approximately 1 mile east of its intersection with Rockford Bay Road and extends to the intersection of Black Rock Road and is bordered by Rockford Bay Road to the south. The individual parcel numbers for the land subject to this request are:

48N04W-08-6800	Section 8	Township 48 North	Range 4 West	40.00 acres
48N04W-08-8000	Section 8	Township 48 North	Range 4 West	167.08
48N04W-08-8600	Section 8	Township 48 North	Range 4 West	40.00
48N04W-08-9200	Section 8	Township 48 North	Range 4 West	50.00
48N04W-09-3970	Section 9	Township 48 North	Range 4 West	83.45
48N04W-09-4600	Section 9	Township 48 North	Range 4 West	67.63
48N04W-09-5800	Section 9	Township 48 North	Range 4 West	10.00
48N04W-09-6800	Section 9	Township 48 North	Range 4 West	80.00
48N04W-16-0900	Section 16	Township 48 North	Range 4 West	2.29
48N04W-16-2800	Section 16	Township 48 North	Range 4 West	79.40
48N04W-16-3650	Section 16	Township 48 North	Range 4 West	34.27
48N04W-17-0050	Section 17	Township 48 North	Range 4 West	10.00
48N04W-17-0075	Section 17	Township 48 North	Range 4 West	10.00

Total: 674.12 gross acres

- 2.07 **Zoning.** The site and surrounding area is zoned both Rural and Restricted Residential. Of the total 674 acres at the project site, 538 acres are zoned Rural while the remaining 136 acres are zoned Restricted Residential.

The Zoning Ordinance, using calculations for both the Rural and Restricted Residential zones, will allow up to 704 single-family residences on the site, under the current zoning. As proposed, the overall project density is approximately 1.8 acres per home site, using the calculation of 381 living units and 674 acres.

Minimum lot size requirements within a planned unit development can be redistributed. Section 15.04 of the Zoning Ordinance states, "The distribution of dwellings or other land uses within the Planned Unit Development shall not be affected by the zoning district boundaries."

- 2.08 **Physical Characteristics.** Most of the site is a gently rolling area, although the south side slopes off rapidly to Rockford Bay Road. The highest point is a grassy knoll in the middle of the property. Much of the site adjacent to Loffs Bay Road is an unforested, open field, partially cultivated with wheat. The rest of the site is forested. Interspersed throughout the site are steep drainage channels and wetland areas. The total relief (high point to low point) at the site is 500 feet.

The Soil Survey of Kootenai County Idaho identifies eight prevalent soil types on site. The open field areas contain mostly Santa silt loam and Taney silt loam, soils well suited to Douglas fir, ponderosa pine, western larch, lodgepole pine and western white pine. The available water capacity is moderate; permeability can be slow, resulting in a perched water table in the spring. Depending on the slope, runoff is medium to rapid; the hazard of erosion moderate to high. Limitations for home sites are the slow permeability of the soil and the seasonal perched water table. The primary limitations for the construction of roads are potential frost action damage and the inherent low support strength of the soil.

Lacy-Bobbitt association and Lacy-Rock outcrop complex soils are found in the steeper areas and are soils typically found in canyon areas and along escarpments. Limitations for homesites and roads are depth to rock, slope, and stoniness.

Blinn stony loam soil is found along the shoreline and has a high hazard of erosion. The Applicant will be working with the Idaho Department of Lands, Navigable Waters Division, to apply for an encroachment permit in an effort to protect and enhance shoreline development.

Shallow depth to rock and the presence of wetlands prohibit subsurface disposal of wastewater at the site.

The Applicant's environmental report states that previous development efforts in the 1980s included grading activities that resulted in recontoured areas with exposed subsoil and stockpiled topsoil. These areas have several deep and eroding gullies that are minimally vegetated.

- 2.09 **Noxious Weeds.** The site was visited in August 1999 by Sandy Daniel, Superintendent of Kootenai County Noxious Weed Control. Her site evaluation confirmed the presence of Canada thistle, Dalmatian toadflax and spotted knapweed. Ms. Daniel states that the current weed infestation is light considering the vastness of the site. Her recommendation is that treatment be required along the roadway during the development of the golf course and clubhouse to prevent the spread of spotted knapweed to other areas.
- 2.10 **Stormwater Plans and Review.** All site disturbing activity must be in compliance with Site Disturbance Ordinance No. 283. The Applicant's engineer has filed a preliminary stormwater drainage plan with the Planning Department.

Rand Wichman, Senior Planner, reviewed the stormwater plan. His comments are outlined in a memorandum dated November 18, 1999. He states that due to the sensitive nature of the soils at the site, a complete site disturbance plan will be required prior to any earthwork or construction being performed at the site. The stormwater system will be required to be sized to treat runoff from the anticipated impervious areas on all lots within the development. He recommended that the Planning Commission consider requiring treatment of runoff from all irrigated areas of the golf course. In addition, an extensive geotechnical engineering evaluation will be necessary to address the seasonal high groundwater and the slope stability for the steeper portions of the site.

The Applicant responded in a letter dated November 24, 1999. The letter addresses the concerns raised by Mr. Wichman and states that a specific, detailed site disturbance plan that includes a geotechnical review and stormwater management plan will be prepared and submitted for review by the Planning Department after receiving approval of the planned unit development master plan. On November 5, 1999, the Applicant filed a Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General permit with the U.S. Environmental Protection Agency.

- 2.11 **Lakes, Rivers and Streams.** The site is located on Rockford Bay on the southwest side of Lake Coeur d'Alene. The site is located on the Coeur d'Alene Indian Reservation and is not included in the area mapped by the Federal Emergency Management Agency for flood zone purposes.
- 2.12 **Wetlands.** The Clean Water Act of 1975 was established to maintain and restore the physical and biological integrity of the waters of the United States. Section 404 of the Clean Water Act authorizes the Army Corps of Engineers to issue permits for the discharge of dredged or fill material into the waters of the U.S., which includes wetlands.

The Applicant requested a wetlands study to be done by Selkirk Environmental for the purpose of providing a detailed determination and delineation of the project area. This study has been completed and is a part of the file marked as Exhibit A19.

Selkirk identified twenty-two jurisdictional wetland areas at the site. Seven channelized drainages were identified and delineated as waters of the U.S.

On December 7, 1999, The Planning Department spoke with Gregg Raynor, Regulatory Project Manager, Army Corps of Engineers. He stated that the Applicant has filed some initial permits for wetland fills with the Corps. A letter outlining the recommendations and requirements from the Corps were available at the hearing and entered as an exhibit.

- 2.13 **Wildlife Habitat.** The site supports a diverse stand of wildlife, including a wide variety of birds. In a letter dated November 4, 1999, the Idaho Fish and Game Department states that while the proposal includes retention of open space and some natural cover, development of the site will clearly result in a reduction in the numbers and kinds of wildlife presently found. Also, the potential for human/wildlife conflicts will increase. The Department makes the following recommendations to help reduce the impact to wildlife:
- Maximize the retention of open, undeveloped space through clustering. A minimum ratio of 80% open space to 20% developed area.
 - Avoid development in or adjacent to wetlands, stands of mature timber, stream corridors and waterfront areas.
 - Maintain travel corridors for wildlife, particularly from upland areas to the lake. Any fences used should be designed to not limit movement of wildlife.
 - Retain large trees at or near waterfront sites for use by bald eagles, ospreys, and other raptors.

The Department also expressed concern with regard to the production of sediment and increased stormwater runoff effecting water quality in the lake.

- 2.14 **Significant Historical and Cultural Sites.** This site is located within the boundaries of the Coeur d'Alene Reservation and is under the jurisdiction of the Coeur d'Alene Tribe. In a letter dated June 4, 1999, Ernest Stensgar, Chairman of the Tribe stated that the Tribe has no opposition to the project as proposed. In a subsequent telephone conversation with Alfred Nomee on November 8, 1999, the Tribe requested that any development activity at the site that should result in uncovering any archeological artifacts, temporarily cease and the Tribe be notified by phone.

In 1985, the University of Idaho completed an archeological reconnaissance of the proposed site. Their conclusions are included in a letter that states, in short, that it remains possible, but unlikely, that a subsurface cultural feature, such as a burial, may exist in the area.

- 2.15 **Comprehensive Plan Designation.** The Kootenai County Future Land Use Map designates the site and immediate area as Rural and Rural Residential land as well as a Surface Water Resource Area. The purpose of this designation is to provide a "country like" setting for residences with agricultural, timber, or open space environments, and to prevent the financial burden of providing infrastructure where it would be least beneficial. A Rural Area is defined as a sparsely settled area usually related to farming, forest management, or open space, that is distinct from settled communities. This designation may have some agriculture or timber production. The Rural designation is given to areas of the County which are not close to population centers and in areas where continued sparse settlement is encouraged due to the difficulty of providing services. Services and infrastructure are not expected to be improved in the near future.

Residential designations are given to areas where the primary use is residential. These residential areas are outside of a city's boundaries, but may have some of the services and amenities of a city. These locations often have distinguishable neighborhoods with community or homeowners' associations. Development in these areas requires improved infrastructure and services. The residential designations encourage a wide variety of residential uses within three density ranges: Rural Residential, Suburban Residential and Urban Residential. The Rural Residential areas commonly border Rural areas and may actually be Rural in appearance. Distinguishing these areas from those areas designated as Rural is the size of the existing parcels and the level of police and fire protection that can be provided.

The Future Land Use Map is not an attempt to define exact boundaries, but instead a general outline of areas of suitable projected land uses. There are no sharp breaks between boundaries, rather transitions that should be considered approximately ¼ mile wide.

The Future Land Use Map is intentionally general. Designations should be given to broad areas, not to individual sites. For most of the County, the minimum area to be considered for a separate designation should be approximately ½ square mile (320 acres).

- 2.16 **Surrounding Land Use.** Surrounding the proposed site, is an area that is open and sparsely populated. The majority of the parcels that lie to the north and east of the site are approximately 10 acres in size. Larger, unplatted 20 acre and larger parcels lie to the northeast; south of the site, along the shores of the lake and south of Rockford Bay Road, homesites are smaller, platted lots, most under an acre in size. The area is rural in nature, with few homes along Loffs Bay Road in view. Along Rockford Bay Road, the land use is typical of summer, lakeside homes.
- 2.17 **Area of City Impact.** The parcel is not located within an Area of City Impact.
- 2.18 **Distance to Services.** The nearest services are within 5 miles of the site, at the Rockford Bay Store and

the Fighting Creek Store.

- 2.19 **Sewage Disposal.** The Applicant proposes that at completion, the development will be served by a Septic Tank Effluent Pumping (STEP) wastewater system. This system consists of individual septic tanks, wet wells and lift stations, four recirculating sand filters, an outside storage pond, and a 30-acre land application irrigation system.

Each lot owner will be responsible for individual septic pumping. Effluent from each septic tank will be gravity fed/ pumped with the aid of lift stations to a large collection or dosing tank. The effluent is then circulated three to four times through a 24-inch deep sand filter. The effluent is contained within the sand filter by a HDPE membrane and concrete floor. The effluent is then chlorinated and pumped to an outside pond for storage. The pond will be lined with a 60-mil thick liner, fenced, and designed to hold 12 million gallons of treated wastewater. Odor will be removed through the use of a vent pipe. Residual odors are routed to a biofilter, filled with natural substances such as peat or soil. The system is being designed to accommodate 397 equivalent residence connections (ERs) at an average flow of 250 gallons per day for each.

During the winter months, the effluent will remain in the pond. In the spring of each year, DEQ will determine when land application may begin. It is anticipated that land application will be carried out from April through October through drip and spray irrigation.

It is projected that the treated effluent will reach disinfection levels of < 2.2 organisms per 100 ml. This will allow minimum 50 foot buffer zones for drip irrigation, and 100 foot minimum buffer zones for spray irrigation.

The sales office, located on the waterfront parcel, will not be connected to the community sewage system. An approved septic tank and drainfield across the road will be used to service the site.

- 2.20 **Water.** The development is proposed to be served by a community water system. Domestic water will be supplied by wells located in the project. Two test wells have been drilled with a capacity in excess of 100 gallons per minute; additional wells will be added as the need arises. Water from the wells will be pumped into two 150,000-gallon reservoirs equipped with booster pumps to pressurize the distribution system.

Irrigation water will be provided by pumping water from Lake Coeur d'Alene to the ponds on the golf course. Dual irrigation pumps will be installed in the existing 12 inch casings at the lake frontage lot. Water will be pumped to the golf course ponds by an adequate distribution line.

The Department of Environmental Quality has approved sites for four drinking water wells. DEQ recommends:

- Storage capacity at 800 gallons per connection

- Total daily use without separate irrigation provisions - 1500 gallons per residence

- Total daily use with separate irrigation provisions - 800 gallons per residence

- Maximum instantaneous demand - 300 gpm

- Pressure tanks with a gross volume 10 times the capacity of the largest pump used to prevent pumps from cycling excessively

Since groundwater can be scarce, the use of potable water for irrigation shall not be allowed.

The Applicant is proposing that the water and sewer systems shall be maintained by the Association, authorized to act as a Water and Sewer System Control Committee.

The Applicant has applied for and been granted assignment of a permit to appropriate water from the lake through the Department of Water Resources.

Concerns regarding the static levels of adjacent wells were raised at both public hearings and in public comment received during the application process. In an effort to mitigate those concerns, the Applicant has agreed to spend a maximum of \$10,000 to complete a baseline study of all wells located within 300 feet of the subject property. The details of this offer are outlined in a March 1, 2000 letter from the Applicant that is a part of the file.

- 2.21 **Air and Water Quality.** The Applicant is providing funding to the Worley Highway District to improve and pave approximately 2.25 miles of Loffs Bay Road. Loffs Bay Road is currently gravel. Roads within the Planned Unit Development will also be paved.

Water quality impacts can be reduced through the requirements of the Site Disturbance, the Army Corps of Engineers and the NPDES permit processes.

- 2.22 **Hazardous Areas.** This site was assessed by Budinger and Associates, a geotechnical engineering firm in Spokane. In a letter dated May 22, 1998, the firm reported that they had completed a Level I Environmental Site Assessment of the property. The letter states they did not find any evidence of adverse environmental conditions including heavy metal contamination.

Thirty-one of the 104 soil types in the County have inherently low support strength and are susceptible to slippage. Two of these soils, Santa and Taney (slope range from 5 - 20% and 3 - 25% respectively) are found at the site. With low support strength soils, the steeper the slopes, the greater the hazard of slippage. In their natural state, such soils are often stabilized by vegetation.

- 2.23 **Access and Transportation.** The site is primarily accessed off of Loffs Bay Road and is under the jurisdiction of the Worley Highway District. Three approaches into the development will exist on the south side of Loffs Bay Road. There will be a main approach to the clubhouse and golf course, a northwest subdivision entrance and an entrance to the parking lot for the wastewater treatment facility. Two secondary approaches exist on Rockford Bay Road. One ingress/egress into the southern portion of the subdivision and one to the south of Rockford Bay Road, to the lake access portion of the parcel. In a letter dated August 10, 1999 the District states that the Board of Highway Commissioners will require all of the approaches to be professionally designed to safely accommodate the projected traffic.

According to their letter, the Highway District Commissioners will require that 1.2 miles of Rockford Bay Road and 2.25 miles of Loffs Bay Road be reconstructed to the current Highway Standards for Associated Highway Districts, Kootenai County, Idaho. A variance from the standards on the width of the travel surface from 28 feet to 24 feet will be granted, although two-foot shoulders will still be required. Pavement will be a requirement on both roadways. The District will administer the design and construction of the project.

The District proposes two separate contracts for the improvements. The first contract would be for the improvements to Loffs Bay Road, minus the pavement. The second contract would be for the improvements to Rockford Bay Road, including paving of Loffs Bay Road.

Clubhouse Drive will be built to highway district standards and with a 28 foot width; other roads within the development will be built to highway district standards with exception for the width, which is proposed to be 24 feet. The road to the lake side portion of the site will also meet highway district standards with the exception of width (20 feet) and a grade of 10%. All roads will be privately maintained by the Board of Directors of the Association.

The Idaho Transportation Department has been notified of the proposal and to date no letter of comment has been received. ITD has plans to reconstruct the intersection of Rockford Bay Road and Highway 95. Those plans include turn lanes at that intersection.

- 2.24 **Fire Protection.** The area is under the protection and jurisdiction of the Worley Fire District. In a letter dated August 12, 1999, the District states that the development will have 300,000 gallons of water storage for firefighting use. The hydrant system capable of supplying this water will be capable of flowing 2500 gpm for 120 minutes. According to the Applicant's engineer, hydrants will be set as the roads are developed.

Access roads within the development will meet or exceed the Fire District's standards for width, surface and grade. All structures will be built to comply with the Worley Fire District's requirements.

In a letter dated September 20, 2000 (Exhibit PA24), the Fire District requests the following language for this Order of Decision:

"The Applicant has agreed to convey by deed to the Worley Fire District a lot within the subdivision which will house a new fire station. In addition, they have agreed to construct the fire station at their expense and convey ownership to the Worley Fire District. The station to be complete with parking areas, all utilities and a payment of \$150,000 to be used to purchase and equip fire apparatus for the new station. The Applicant has agreed that completion of the fire station shall be accomplished prior to the completion of, and opening of, the clubhouse. Conveyance by deed requires the Applicant include the District's parcel in a subdivision application with the Planning Department, contingent upon approval by the Board of County Commissioners."

A prior letter from the District, dated September 19, 2000 (Exhibit PA23) indicated that the fire station be completed and made serviceable prior to residential construction. To further clarify when the station needs to be completed, staff contacted Lonnie Dyer, Chief, of the Worley Fire District on October 26, 2000. Chief Dyer indicated that the station needed to be completed as outlined above prior to any residential construction and prior to beginning construction on the permanent clubhouse. The Conditions of Approval reflect this most recent request from the Fire District.

- 2.25 **Schools.** This subdivision will be served by Coeur d'Alene School District #271. On July 1, 1999, the District commented on the proposal with a projected build out of 300 homes. Their letter outlines the major concerns of the District which include design considerations that provide safe places for children to walk, ride and wait for school buses. They stated that designated school bus stops should be incorporated into the design of the development and delineated on the master plan. The Applicant has stated that the master plan will be revised to replace the trash compound with a bus stop at the commercial portion of the site indicated for a trash compound.
- 2.26 **Solid Waste.** Property owners in Kootenai County are responsible for providing solid waste pickup for a project both during and after construction. The original master plan for the entire project includes an area designated as a trash compound site, although the Applicant has recently indicated to the Planning Department a preference for trash pick-up service at each individual building. If the compound were built, it would consist of dumpsters for trash and roll off containers for recyclables, the size and number to be determined by the demands of the development.

The master development plan indicates that the compound area will be located just east of the intersection of Loffs Bay Road and Black Rock Road.

In a letter dated October 12, 1999, the Kootenai County Solid Waste Department gives their recommendations for waste disposal. These recommendations include the proper disposal of construction

and land clearing debris as well as garbage disposal once residential construction begins. They also request that the Applicant provide containers for recycling.

- 2.27. **Landscaping and Design Standards.** The Zoning Ordinance has specific standards for landscaping, parking, and screening of all commercial and community use structures. Proposals are reviewed against these standards at the building permit stage.
- 2.28 **Lighting.** The Zoning Ordinance requires that a Conditional Use Permit be applied for and granted prior to erecting any outdoor lighting for recreational facilities. The Planning Department has provided lighting standards obtained from The Illuminating Engineering Society of North America as requirements to be used by the Applicant in designing a lighting plan for the development.
- 2.29 **Signage.** Signs are generally prohibited in the Rural and Restricted Residential zones. The Applicant has proposed signage for the development. All signs must conform to requirements provided herein.
- 2.30 **Lake Access.** The lakeside portion of the parcel is proposed to be for day use by boaters and picnickers. There will be a dock, but no boat slips. The closest boat launch is at the Rockford Bay Marina, southwest of the site. A sales and leasing office will be located at this site.

III APPLICABLE LEGAL STANDARDS

- 3.01 Kootenai County Subdivision Ordinance No. 26-B
- 3.02 Kootenai County Zoning Ordinance No. 159, as amended
Article 15, Planned Unit Development
- 3.03 Kootenai County Building Ordinance No. 221-A
- 3.04 Kootenai County 1994 Comprehensive Plan
- 3.05 Kootenai County Site Disturbance Ordinance No. 283
- 3.06 Kootenai County Road Naming and Addressing Ordinance No. 229-B

IV COMPREHENSIVE PLAN ANALYSIS

Goal 1: Maintain and improve air quality

- While development of any kind will generate more pollutants into the air as traffic increases, the paving requirements of the Highway District will reduce dust and particulate matter now being generated by local traffic on gravel and dirt roads.

Goal 2: Maintain the existing high quality of groundwaters in Kootenai County

- Development at the site will undoubtedly have an impact on the existing groundwaters. However, development that includes a geotechnical review and stormwater management plan will assist in lessening the negative impacts on groundwater quality. A wastewater treatment facility in lieu of individual drainfields lessens the impact to groundwater supplies.

Goal 3: Ensure that demand of groundwater resources does not exceed sustainable yield

- The use of lake water rather than potable water for irrigation will help to conserve groundwater supplies. Clustered housing conserves water used for irrigation purposes.

Goal 4: Preserve, protect, and enhance the water quality and quantity of lakes, streams, rivers, and wetlands

- Mitigation through the implementation of erosion control and on-site stormwater treatment will help to limit the flow of untreated stormwater into the lake.
- Development in wetlands must be restricted to ensure that wetlands continue to function as filters/purifiers to groundwaters, as recharge areas to surface and groundwaters, and are

- allowed to retain their ability to reduce the adverse effects of flooding.
- Designating environmentally sensitive areas and requiring safeguards for these areas will ensure development will occur in areas less susceptible to contamination.
- The use of greenbelts provide buffer strips that protect surface waters and wetlands.

Goal 5: Encourage the preservation, protection and enhancement of native vegetation

- Noxious weeds are injurious to crops, livestock, and public health. In an effort to protect the environment and promote sensible development, the Planning Department works in conjunction with the Kootenai County Noxious Weed Department to ensure that noxious weed mitigation be a consideration in all current land use applications. The Applicant has stated intent to maintain native vegetation and will be working with the Noxious Weed Department to eliminate noxious weeds at the site.

Goal 6: Encourage the preservation, protection, and enhancement of fish and wildlife habitat

- The Applicant's narrative lists a variety of wildlife and fowl habitats at the site: grasslands, woodlands, wetlands. Development requirements set forth by the Board of County Commissioners will include coordination efforts with wildlife management agencies. In addition, provisions for setbacks from riparian areas will protect fish habitats. Fish and Game have identified specific areas as that are most likely to provide shelter for the area's wildlife. A commitment to providing and protecting these areas will support this goal.

Goal 7: Prevent or limit development activity in hazardous areas

- The Applicant's geotechnical report will include soils and slopes not conducive to development. Restricting development in these areas and requiring a site disturbance plan to control erosion will ensure that Goal 7 is met.

Goal 9: Develop land use regulations that protect property rights, maintain quality of life, provide adequate land for development, buffer non-compatible land uses, and protect the environment

- The soils, topography, and climate in this area have, in the past, allowed for sustainable farming practices. However, farming in the area has declined, population centers are shifting and citizens are looking for more housing and recreational areas.

Goal 10: Guide population growth to allow for inevitable expansion without sacrificing the environment or the quality of life which currently characterizes Kootenai County

- A large scale development, such as is proposed, in the Loffs Bay - Black Rock area will indelibly change the character and living style of the residents now living there. That change must be accomplished without sacrificing the quality of life in the area.
- A maximum number of living units will be established with the approval of the PUD master plan. The number recommended by the Planning Commission and adopted by the Board of County Commissioners reflect a genuine interest in balancing the Applicant's request with the desire of the community and neighborhood.

Goal 11: Provide safe, adequate, and affordable housing for people of all income levels

- The proposal presents a range of home styles and prices built to a standardized Building Code.

Goal 12: Promote a diversified, safe, and stable economic base in an environmentally responsible manner

- The project will provide opportunities for economic benefits to the area in the form of increased employment and revenues generated through the construction of the development.

Goal 13: Maintain viable agricultural, forestry and mining land uses

- Farming practices at the site have been abandoned for the past decade.

Goal 14: Provide for the efficient, safe and cost-effective movement of people and goods

- The Worley Highway District has reviewed the Applicant's request and responded with requirements that are expected to support this goal. The Idaho Transportation Department has recognized the need for turn lanes and widening of Highway 95, even before this proposal was submitted. This request encourages the development of public roads. Approaches will be limited to what is indicated on the plat.

Goal 16: Provide efficient, convenient, and effective government services

- A portion of the site will house a fire station and provide funds for equipment for the Worley Fire District. The Fire District and the Applicant have agreed that the fire station is to also be used for community purposes, on a permission-first basis from the District. A community use facility would support the Comprehensive Plan's objective of optimizing public investment and providing direct, coordinated services to the public.

Goal 17: Ensure efficient and effective police, fire, and emergency services

- Adequate water supplies shall be provided for fire suppression

Goal 18: Assist in the efficient and orderly expansion and improvements of public utilities and services

- An additional fire station in the area will maximize a public investment as it provides a service to all homes/citizens in the area.

Goal 19: Ensure the availability and affordability of energy-related services while protecting the environment

- The Kootenai County Building Department will ensure all structures are built to be Northwest Energy Code compliant.

Goal 20: Protect water quality to ensure adequate quantity and quality of drinking water to meet the current and future needs in the County

- See Goals 2 and 3.

Goal 21: Provide environmentally sound, efficient, and cost effective management of wastes

- Since the placement of all construction debris is prohibited in the County's rural collection system, arrangements will need to be made for the disposal and recycling of all construction and land clearing debris. The operation of the planned unit development will generate refuse and recyclables that will need to be separated for proper pickup and disposal. Environmental protection from unsafe solid waste disposal practices can be accomplished by the Applicant through working with the Kootenai County Solid Waste Department. Recycling of all land clearing and construction debris, aluminum, newspapers and cardboard is a step towards an environmentally sound development

Goal 22: Provide for school representatives to participate in the community planning process

- The Coeur d'Alene School District has been given the opportunity to provide comments regarding the increase in the numbers of school children expected at the time of full build-out. The safety of school children is a serious consideration in a development the size of this one. In order to ensure a safe place for children to wait for the school bus, a bus stop shall be incorporated into the development plan and delineated on the final PUD master plan. The Planning Director and School District 271 shall approve this bus stop.

Goal 23: Develop quality County parks, greenbelts, and recreational facilities to meet the diverse needs of a growing population

- The central theme of the Applicant's proposal is an 18-hole golf course. Shoreline

development will include a day use picnic area.

Goal 24: Secure waterfront and near-shore areas for beneficial public uses and enhance public enjoyment of county waterways

- The proposal includes development of a lakeside public area, which includes a dock.

Goal 25: Encourage the preservation, protection, and enhancement of areas that are historically and culturally significant

- The State Historical Preservation Office and the Coeur d'Alene Tribe record all artifacts that are unearthed during excavation/construction both inside and outside the boundaries of the Coeur d'Alene Reservation. The Applicant has contacted the Coeur d'Alene Tribe and has agreed to notification in the event of the discovery of any historical or culturally significant items.

Goal 26: Foster growth in a manner that does not compromise the visual qualities of Kootenai County

- Deliberate placement of structures within building envelopes make the best possible use of the topography at the site.

Goal 27: Preserve, protect, and enhance natural landmarks and areas of scenic beauty, such as waterways and unique landscapes

- The developer has made a commitment to incorporate the unique landscape of the site into the design of the golf course and subdivision. CC&Rs to be recorded with the PUD master plan can help assure adherence to this commitment. In addition, the Covenants and CC&Rs can protect the landscape from the visual pollution caused by unnatural color schemes.

Goals 8 and 15 are not applicable.

V CONCLUSIONS OF LAW

- 5.01 Article 15 of Kootenai County Zoning No. 159, as amended, specifies the General Provisions and Procedures for reviewing requests for Planned Unit Developments. Based on the analysis and findings herein, it is concluded that the request is in harmony with the purpose and intent of the Zoning Ordinance and is in conformance with the specific requirements of Idaho Code and the Zoning Ordinance, as well as the intent of the 1994 Comprehensive Plan. The project is in the public interest and will not adversely effect the public interest.
- 5.02 The construction and operation of the project will satisfy the performance standards set forth in the Zoning Ordinance (Article 15 and Article 17) and Site Disturbance Ordinance No. 283. The zoning at the site is in accordance with the request. Full consideration has been given to the proximity of adjacent uses and the effect of the proposal on adjacent property. The construction and operation of the project will also be required to conform to all other applicable regulatory requirements, including those of the Panhandle Health District, the Division of Environmental Quality, the Worley Highway District, the Worley Fire District and the Idaho Transportation Department prior to issuance of certificates of occupancy or commencement of operations.
- 5.03 The public convenience and necessity will be served by the project with the improvements made to the road system, the addition of a fire station, the increase in jobs in the area and the enhancement of bare, unimproved land through landscaping and a viable stormwater plan.
- 5.04 The proposal is in conformance with the goals, objectives and policies of the 1994 Kootenai County Comprehensive Plan, as discussed more fully herein.

- 6.07 All design restrictions set forth in Section 2 of the Architectural Control Rules and Regulations shall be adhered to or as otherwise amended.
- 6.08 All commercial and residential structures shall obtain a Certificate of Occupancy from the Kootenai County Building Department prior to occupancy.
- 6.09 All roads inside the project area will be built to highway district standards as provided in Section 2.23 of this Order, except for width. The roads may be constructed in their respective residential phases.
- 6.10 The project's 2.29 acre lakeside portion of the proposal (parcel number 48N04W-16-0900) depicted on the master plan as the location of the sales and leasing office and beachfront recreation area shall be fenced on north, south and west sides and have a security gate off of Rockford Bay Road that will allow controlled access to the site. Activity at the site shall be limited to the hours of 6:00 a.m. to 9:00 p.m.
- 6.11 Any site disturbance within the delineated wetland areas or within any of the drainage channels on the site shall require approval from the Army Corps of Engineers. This includes enhancement of the wetland areas.
- 6.12 The Applicant shall, at all stages of the project, minimize construction development in or adjacent to wetlands, stands of mature timber, stream corridors and waterfront areas. In addition, the project will maintain travel corridors for wildlife, particularly from upland areas to the lake. Any fences used should be designed to not limit movement of wildlife. The Applicant shall retain all large trees at or near waterfront sites for use by bald eagles, ospreys, and other raptors.
- 6.13 In designing the water system(s) for the development, the Applicant shall comply with the recommendations in the Department of Environmental Quality's April 30, 1999 letter that is a part of the file.
- 6.14 The use of potable water for the irrigation system shall not be allowed.
- 6.15 All retail sales within the clubhouse, and recreational center are limited to golf related items and confectioneries directly associated with the facilities' use in which they are located.
- 6.16 Any proposed changes to the associational by-laws, covenants, conditions and restrictions relating to maintenance of the roads, water, stormwater or sewer systems, signs, and architectural rules and regulations shall require the approval of the Planning Director and shall be recorded with the Kootenai County Recorder's office.
- 6.17 Signs shall be limited to monument signs incorporated into the design of the PUD and the sign design of the main entrance, as indicated on the master site plan. All monument signs shall be back lit with low voltage, and ground mounted in keeping with the overall design of the PUD. Directional signs are excluded from this requirement. Directional signs are unlighted, less than 8 square feet in area and are provided for directional rather than advertising purposes only.
- 6.18 All structures shall meet the height requirements of the Worley Fire District, as outlined in their September 19, 2000 letter (Exhibit PA23).
- 6.19 The Applicant shall meet the requirements of the Site Disturbance Ordinance during all phases of the project.
- 6.20 Prior to issuance of building permits for any residential construction, the Applicant must complete

- 5.05 The future land use designations were chosen and defined in consideration of both the environmental conditions and the goals of the 1994 Comprehensive Plan. This proposal has been found to be in conformance with the Comprehensive Plan and the Future Land Use Map.
- 5.06 The Kootenai County Board of County Commissioners finds this request meets the requirements of Idaho's Local Land Use Planning Act.
- 5.07 With regard to the modification of the Order of Decision, the Board of County Commissioners conclude that the request is reasonable and complies with the applicable requirements for such modifications.
- 5.08 These conclusions are based on a thorough analysis of the applicable legal standards contained in Section III of this Order and all of the evidence and testimony presented in these proceedings.

VI ORDER OF DECISION

Based upon the Findings of Fact and Conclusions of Law set forth in this document, the Kootenai County Board of County Commissioners hereby recommends that Case No. PUD-037-99, a request by Black Rock Investments for a Planned Unit Development be **APPROVED** with the following conditions:

CONDITIONS OF APPROVAL

- 6.01 Prior to recordation of the final development plan, but after receiving construction drawing approval and the necessary permits from the applicable agencies for any of the necessary road, fire, sewage, or water systems for the PUD, the Applicant may commence construction on such systems. In addition, site preparation can begin on the golf course, after receiving site disturbance plan approval and the necessary permits from the applicable agencies, but prior to recordation of the final development plan. The Applicant may also construct the sales office and a maintenance building prior to recordation of the final development plan after obtaining the necessary permits. No other construction at the site shall begin prior to recordation of the final development plan.
- 6.02 In the event that any artifacts are found during excavation or construction, all work efforts at the immediate site shall cease and the Coeur d'Alene Tribe Office shall be notified within 24 hours.
- 6.03 The following structures shall be restricted to the maximum size, location and appearance as depicted in the master plan and the exhibits submitted at the public hearing:
- Clubhouse/Restaurant
 - Pro-shop/grill
 - Recreational facility
 - Maintenance facilities
 - Fire station
 - Equestrian center
 - Sales office
- 6.04 The Sales office on the waterfront lot shall not be used for commercial, retail sales of any merchandise.
- 6.05 Specific standards for parking, lighting, landscaping and screening will be applied, as required in Article 17 of the Zoning Ordinance, at the time the building permit for any structure is applied for. In addition, all public-parking areas not associated with a building must be paved.
- 6.06 A Conditional Use Permit shall be applied for and approved prior to the placement of any recreational lighting. Any outdoor lighting proposed, including street lights, shall be delineated in a lighting plan and approved by the Planning Director prior to placement and use.

construction of the fire station and related improvements and payments to the Worley Fire District as outlined in their September 20, 2000 letter. It is recognized that the fire station parcel cannot be deeded to the District until after the lot is created and final plat is recorded. The fire station parcel shall be included in the first final plat for the PUD and shall be deeded to the Fire District within 30 days of recordation of said plat.

CONDITIONS FOR FINAL DEVELOPMENT PLAN AND RECORDATION OF PLAN

- 6.21 Prior to recordation of the PUD final development plan, the Applicant shall provide:
- a) An engineered geotechnical evaluation of the site, particularly addressing the seasonal high groundwater table and slope stability;
 - b) A contract with a solid waste source that addresses the disposal of all construction and land clearing debris. This contract will include provisions for recycling all debris that is eligible. The Applicant may choose between a private hauler or make arrangements to drop off their refuse at the Kootenai County Solid Waste Department;
 - c) Design and delineation on the final development plan with acceptance by the Planning Director and School District 271 of a bus stop for school children;
 - d) Construction drawing approval from the appropriate agencies for the following items:
 1. Improvements to Loff's Bay and Rockford Bay Roads as outlined in the August 10, 1999 letter (Exhibit PA2) from the Worley Highway District.
 2. Improvements to Clubhouse Drive from Loff's Bay Road to the Maintenance Building to be approved by the County Planning Department.
 3. Water and sewer systems necessary to support the golf course use, to be approved by the Department of Environmental Quality.The Applicant shall have the option of completing these improvements or providing a suitable financial guarantee for these improvements prior to recordation of the final development plan.
- 6.22 The following structures shall be restricted to the maximum size, location and appearance as depicted in the master plan and the exhibits submitted at the public hearing:
- Clubhouse/Restaurant
 - Pro-shop/grill
 - Recreational facility
 - Maintenance facilities
 - Fire station
 - Equestrian center
 - Sales office
- 6.23 The Sales office on the waterfront lot shall not be used for commercial, retail sales of any merchandise.
- 6.24 The Applicant shall meet the requirements of Article 15 of the Zoning Ordinance with regard to submitting the required information for the final development plan. These items include information on the form of ownership and maintenance of common open space, and final association by-laws, covenants, conditions, and restrictions for the development.
- 6.25 Any proposed changes to the associational by-laws, covenants, conditions and restrictions relating to maintenance of the roads, water, stormwater or sewer systems, signs, and architectural rules and regulations shall require the approval of the Planning Director and shall be recorded with the Kootenai County Recorder's office.

- 6.26 If the final development plan is not recorded prior to December 31, 2005, the Planned Unit Development shall be considered to have expired and no further development of the PUD shall occur without approval of a new application. Such an application shall be subject to the ordinances in place when the new application is submitted.
- 6.27 In designing the water system(s) for the development, the Applicant shall comply with the recommendations in the Department of Environmental Quality's April 30, 1999 letter that is a part of the file.
- 6.28 The use of potable water for the irrigation system shall not be allowed.

CONDITIONS TIED TO GOLF COURSE USE OR CLUBHOUSE CERTIFICATE OF OCCUPANCY

- 6.29 A temporary clubhouse may be built in anticipation of golf play to provide limited services to visitors to the site. Construction of the permanent clubhouse is expected to be complete by December 2005.
- 6.30 Prior to use of the golf course or issuance of the Certificate of Occupancy for any clubhouse, the Applicant shall provide:
- A contract that includes the disposal and recycling of all refuse generated as a result of normal day to day operations within the planned unit development. If a trash compound site is designated, this contract shall include recommendations with regard to the number of dumpsters, roll off containers and frequency of pickup service. Roll off containers for aluminum, newspaper, cardboard and magazines shall be permanently located at the trash compound. All containers must have tight fitting lids to prevent scattering and scavenging. The trash compound shall be screened with a 6 foot high sight obscuring fence that meets the architectural control style outlined in the Architectural Control Rules and Regulations, Item 2.5. A building permit indicating Planning Department approval shall be required prior to the placement of the fence. In the event of individual garbage pickup service, a letter from a service provider that a contract has been entered into which includes recycling provisions;
 - A letter confirming that a contract has been entered into with the Noxious Weed Department or that treatment has been applied to the areas infested with knapweed along the roadway.
- 6.31 Prior to use of the golf course or issuance of the Certificate of Occupancy for any clubhouse, the infrastructure items listed in Condition 6.21(d) (for final development plan recordation) must be completed and approved or accepted by the appropriate agency.
- 6.32 The fire station and related improvements and payments to the Worley Fire District as outlined in their September 20, 2000 letter must be completed prior to issuance of the building permit for the permanent clubhouse.

CONDITIONS FOR AMENDMENT TO THE PUD AND SUBDIVISION PLAT APPROVAL

- 6.33 The final development plan for the PUD must be recorded prior to final approval of the first subdivision plat within the development.
- 6.34 Prior to issuance of building permits for any residential construction, the Applicant must complete construction of the fire station and related improvements and payments to the Worley Fire District as outlined in their September 20, 2000 letter. It is recognized that the fire station parcel cannot be deeded to the District until after the lot is created and final plat is recorded. The fire station parcel shall be

- included in the first final plat for the PUD and shall be deeded to the Fire District within 30 days of recordation of said plat.
- 6.35 Platting and infrastructure development for the entire PUD shall be completed within 10 years from the date of signing of this Order of Decision. Failure to complete these requirements prior to this deadline shall result in expiration of the Planned Unit Development and reversion of the zoning back to the underlying zone for the unplatted or undeveloped portions of the project. In such a circumstance, no further development of the project shall be allowed without additional approval of the Board of County Commissioners.
- 6.36 All amendments to the PUD or subsequent applications for subdivision applications shall be governed by the ordinance(s) in effect at the time of the application.
- 6.37 Minor modifications to the timing of improvements as outlined in Exhibit A72 shall be submitted to the Planning Director who shall have the discretion and authority to approve such modifications provided the conditions of this Order are being met. Any major changes to the timing of improvements shall be forwarded to the Board of County Commissioners for consideration at a duly-noticed public hearing for modification to the Planned Unit Development.

DATED this 20th day of December, 2000

ATTEST:
DANIEL J. ENGLISH, CLERK

Sandy Rockhast
BY: Deputy Clerk

BY ORDER OF THE KOOTENAI COUNTY
BOARD OF COMMISSIONERS

Richard Panabaker
Richard Panabaker, Chairman

Dick Compton
Dick Compton, Commissioner

Ronald D. Rankin
Ronald D. Rankin, Commissioner

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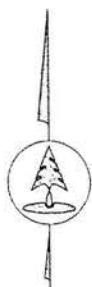
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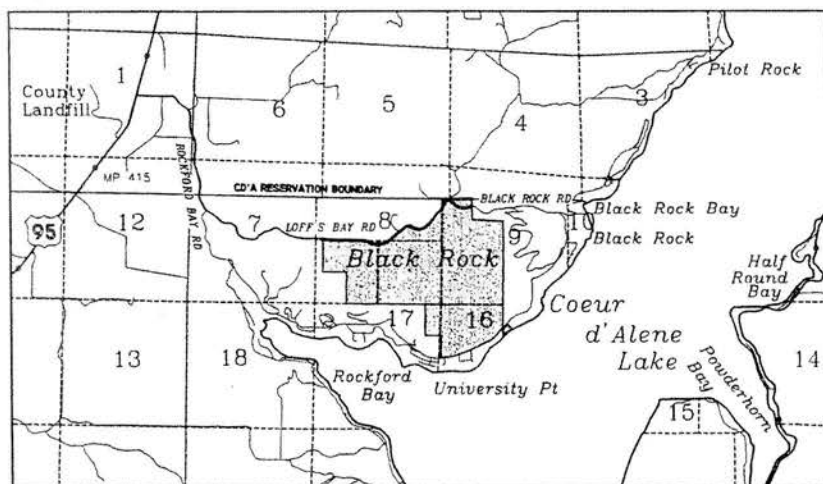
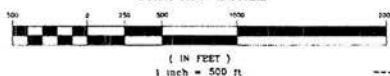
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FLAT of **BLACK ROCK**

A SUBDIVISION OF PORTIONS OF SECTIONS 8, 9, 16 & 17,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,
KOOTENAI COUNTY, IDAHO
AUGUST 2001



GRAPHIC SCALE



VICINITY MAP

NO SCALE

BOUNDARY
PAGE 2 OF 11

PAGE 3 OF 11

2
BLACK ROCK P.U.D.
PHASE II

PAGE 4 OF 11

PAGE 5 OF 11

PAGE 6 OF 11

SHEET ONE OF ELEVEN

BKI

pg 299

#11691892

NOTIFICATION CERTIFICATE

I, W. BRANT MORRIS, P.L.S. #6602, A PROFESSIONAL
LAND SURVEYOR IN THE STATE OF IDAHO, DO HEREBY
CERTIFY THAT THE INTERIOR CORNERS REFERRED TO ON
THIS PLAT AS A SET 5/8" x 30" REBAR WITH PLASTIC
CAP MARKED "INC PLS 6602" AND MARKED ON THIS
PLAT WITH THE SYMBOL, * , WILL BE SET BY JULY 1,
2002, IN ACCORDANCE WITH IDAHO CODE 50-1303

W. Brant Morris
W. BRANT MORRIS, P.L.S. #6602

7-29-01
DATE

THE PURPOSE OF THIS SHEET IS TO PROVIDE A
GENERAL OVERVIEW OF THE PLAT OF BLACK ROCK
AND AN INDICATION OF WHAT THE SUBSEQUENT
PAGES ENCOMPASS



Inland Northwest Consultants
PHONE (208) 773-4378 • FAX (208) 777-3128
604 POST STREET, POST FALLS, IDAHO
E-MAIL: inlandnw@idnetlink.com

ENGINEERS
SURVEYORS
PLANNERS

FINAL PLAT OF BLACK ROCK
KOOTENAI COUNTY, IDAHO

DRAWN BY: JOW	DATE: 7/24/01	DWG. NO. 20-0047PLAT-1C	SHEET 1 of 11
90-0048	DATE: 7/24/01	SCALE: 1" = 300'	CK BY: .

0945

tabbies

EXHIBIT

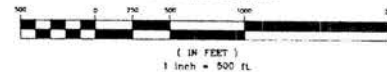
**A SUBDIVISION OF PORTIONS OF SECTIONS 8, 9, 16 & 17,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,
KOOTENAI COUNTY, IDAHO
AUGUST 2001**

SHEET TWO OF ELEVEN

BKI pg 299A

1691892

GRAPHIC SCALE



REFERENCES

- R-1 RECORD OF SURVEY BY HUSSELL & HONCHER, PLS NO 5288, FILED IN BOOK 19 OF SURVEYS, AT PAGE 254. RECORDS OF KOOTENAI COUNTY.
- R-2 RECORD OF SURVEY BY CARY & FRANK, PLS NO 1817, FILED IN BOOK 5 OF SURVEYS, AT PAGE 41. RECORDS OF KOOTENAI COUNTY.
- R-3 RECORD OF SURVEY BY J. RONALD DUNSMORE, PLS NO 1003, FILED IN BOOK 4 OF SURVEYS, AT PAGE 344. RECORDS OF KOOTENAI COUNTY.
- R-4 RECORD OF SURVEY BY JAMES EDWARD PHELPS, FILED IN BOOK 3 OF SURVEYS, AT PAGE 564. RECORDS OF KOOTENAI COUNTY.
- R-5 RECORD OF SURVEY BY JAMES P. WELCH, PLS NO 3451, FILED IN BOOK 3 OF SURVEYS, AT PAGE 60. RECORDS OF KOOTENAI COUNTY.
- R-6 INSTRUMENTS CONTAINED IN THE ENVIRONMENT FOR TITLE ASSURANCE PREPARED BY NORTH OAHM TITLE COMPANY UNDER COMMISSION NO 10/04/UPDATE DATE JUNE 27, 2009.
- A) KOOTENAI ELECTRIC COMPANY, RIGHT-OF-WAY EASEMENT, FILED AS INSTRUMENT NUMBER 103640. RECORDS OF KOOTENAI COUNTY.
- B) EASEMENT AGREEMENT FILED AS INSTRUMENT NUMBER 1351367. RECORDS OF KOOTENAI COUNTY.
- C) EASEMENT AGREEMENT FILED AS INSTRUMENT NUMBER 1351739. RECORDS OF KOOTENAI COUNTY.

NOTES

1. THERE WAS NO ATTEMPT MADE TO SHOW PHYSICAL FEATURES OF THE PROPERTY, OR TO SHOW ANY NON-RECORDED EASEMENTS, EXCEPT FOR THOSE AS SHOWN HEREON.
2. THE BOUNDARY INFORMATION AS SHOWN HEREON IS AGREEABLE WITH THE MEASUREMENTS REPORTED ON THE RECORD OF SURVEY REFERENCED PER R-1. ANY DISCREPANCIES OR DISCREPANCIES ARE NOTED HEREON.
3. THERE IS AN APPARENT TYPOGRAPHICAL ERROR CONTAINED IN THE CURVE DATA TABLE SHOWN PER R-1 THAT CREATES A NON-TANGENT SITUATION FOR CURVE "C" AS SHOWN THEREON. THE POSITION OF THE MOVEMENT BETWEEN SAID CURVE AND LINE "L-1" HAS BEEN ADJUSTED PER THIS PLAT TO REFLECT THE SOLUTION FOR THE EXISTING RIGHT-OF-WAY AND ADJUSTMENTS OF RECORD, RESULTING IN A TANGENT CURVE AND ACCEPTABLE CLOSURE.

BASIS OF BEARING

BASIS OF BEARING FOR THIS SURVEY IS S 86°49'26" E ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER, SECTION 8, AND IS IDENTICAL TO THAT AS SHOWN PER R-1.

LEGEND

- (R) RECORDED
- (W) MEASURED
- (C) COMPUTED
- SET 5/8" x 30" STEEL W/ PLASTIC CAP MARKED "INC PLS 5602"
- FOUND 5/8" x 30" STEEL W/ PLASTIC CAP MARKED "PLS 5289" UNLESS OTHERWISE NOTED
- ⊙ FOUND MONUMENT AS REFERENCED PER R-1 & R-2, REPLACED WITH 5/8" x 30" STEEL W/ PLASTIC CAP MARKED "INC PLS 5602"
- COMPUTED POINT-NOT SET
- FOUND SECTION CORNER AS NOTED
- FOUND QUARTER CORNER AS NOTED
- ⊙ FOUND CENTER QUARTER CORNER AS NOTED
- ⊙ FOUND 5/8" REBAR WITH PLASTIC CAP MARKED "PLS 5289", REPLACED WITH 2-1/2" x 36" RND PIPE AND 2-1/2" BRASS CAP MARKED "BLACKHORN R-08 INC PLS 5602 2001"

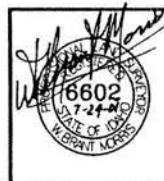
INTE DATA

LINE	BEARING	LENGTH
L1	S88°19'26"E	198.83
L2	S88°26'33"E	219.42
L3	S87°51'37"E	122.94
L4	S86°00'50"E	572.94
L5	S80°21'42"E	119.87
L6	S84°34'28"E	101.79
L7	S82°03'39"W	206.94
L8	S85°21'42"W	279.98
L9	S82°12'03"W	229.48
L10	S83°45'15"W	315.50
L11	S89°21'52"W	298.90
L12	N42°19'24"E	361.73
L13	N52°02'00"E	117.96
L14	N71°48'00"E	122.88
L15	N59°04'49"E	167.76
L16	N70°25'24"E	521.16
L17	N67°00'00"E	122.25

CURVE DATA

CURVE	LENGTH	RADIUS	CHORD	TANGENT	BEARING	DELTA
C1	150.71	204.873	150.67	75.39	N84°51'29" E	473°53'
C2	224.37	206.79	224.26	112.30	S85°45'51" E	57°45'
C3	161.82	3303.74	161.80	80.93	N87°20'01" E	74°29'
C4	231.60	517.08	220.58	117.73	N73°11'15" E	253°08'
C5	232.05	543.06	228.88	118.14	S72°38'10" E	243°46'
C6	683.49	35.35	723.50	350.90	N80°24'11" E	183°23'
C7	302.71	983.93	301.47	152.81	N52°03'42" E	127°03'
C8	241.77	1850.37	241.00	126.76	S51°47'45" E	77°04'
C9	270.42	245.53	256.86	150.77	N68°56'50" E	63°06'15"
C10	289.13	331.50	277.33	152.76	S68°05'41" E	492°27'16"
C11	378.96	815.89	378.56	92.98	N50°52'19" E	163°46'45"
C12	100.36	1730.81	100.35	50.32	N43°02'10" E	131°02'10"
C13	181.52	1061.97	181.30	91.91	N43°13'21" E	94°36'
C14	162.20	942.10	161.40	81.91	N41°57'30" E	124°10'
C15	251.58	997.24	221.13	111.25	S65°28'05" E	19°45'11"
C16	235.22	1186.70	234.84	118.00	N40°44'54" E	11°21'28"
C17	488.44	271.42	484.79	248.79	N75°32'44" E	107°40'
C18	68.22	3715.71	68.17	49.42		

THE PURPOSE OF THIS SHEET IS TO DETAIL THE
BOUNDARY FOR THE PLAT OF BLACK ROCK

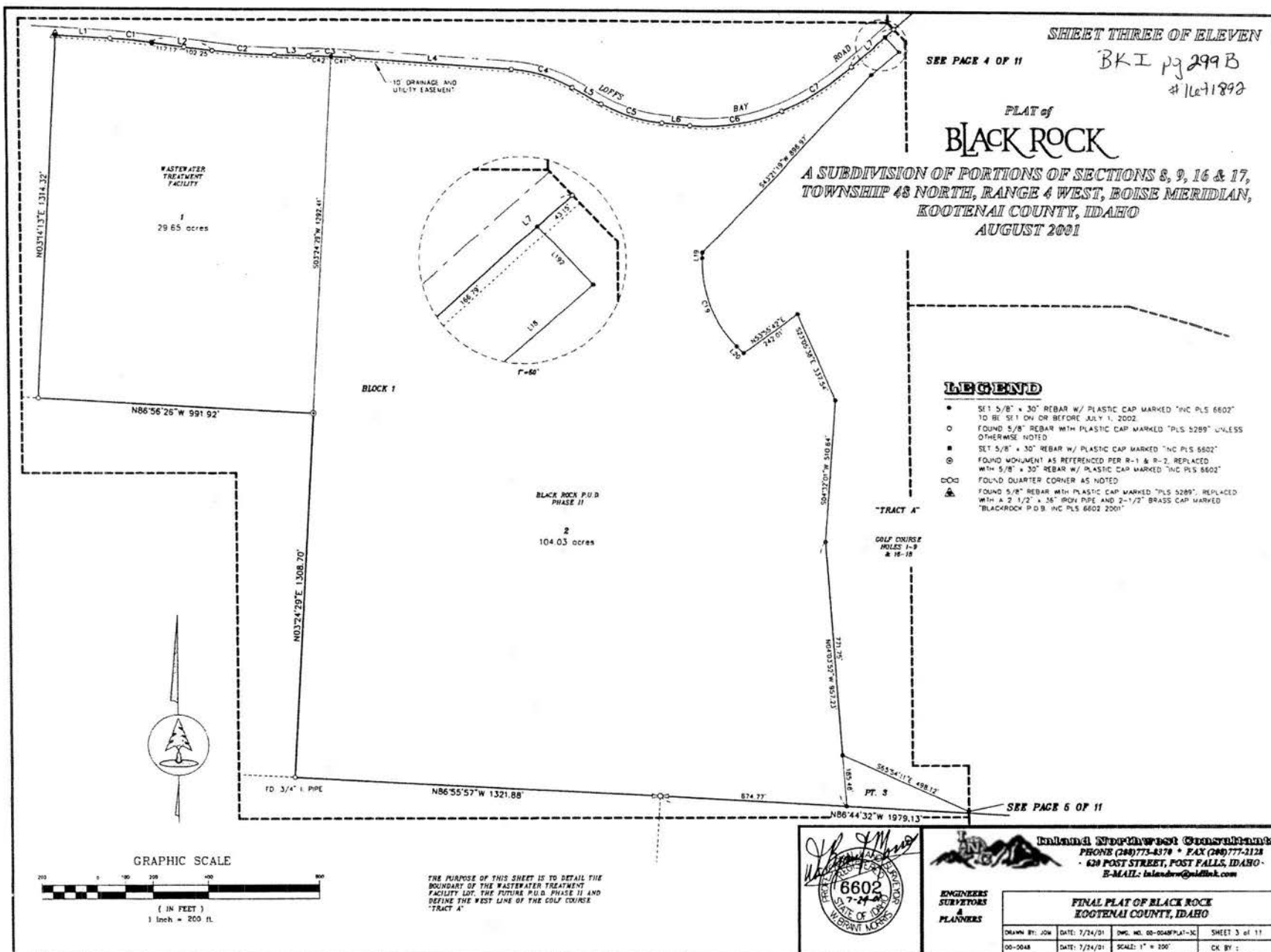


**ENGINEERS
SURVEYORS
&
PLANNERS**

FINAL PLAT OF BLACK ROCK
KOOTENAI COUNTY, IDAHO

DRAWN BY: MPR	DATE: 7/24/01	DWG. NO. 00-00489PLAT-2C	SHEET 2 of 11
00-00489	DATE: 7/24/01	NO. SCALE: UNCHANGED	BY: MPR

0947

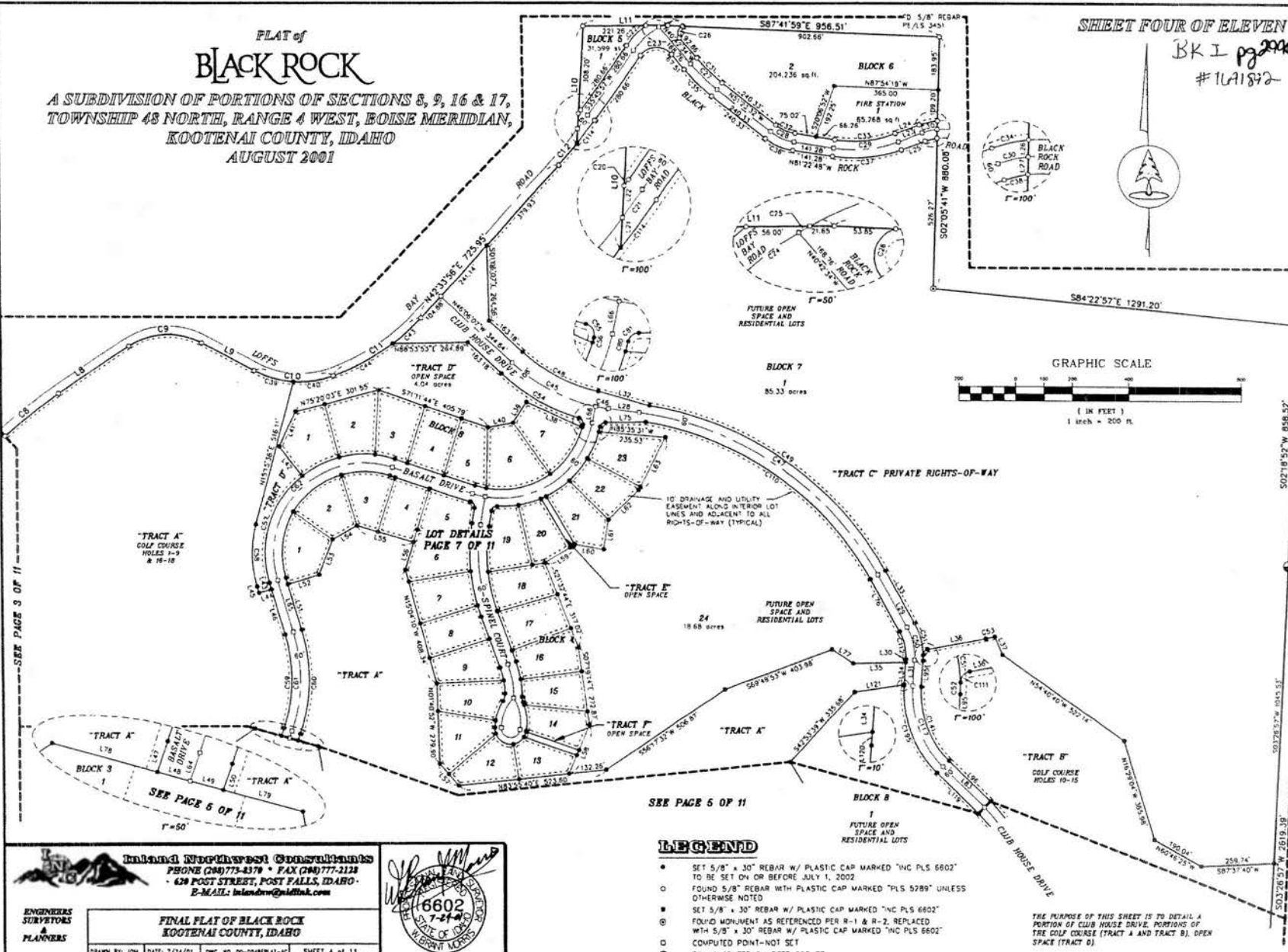


FLAT of BLACK ROCK

A SUBDIVISION OF PORTIONS OF SECTIONS 8, 9, 16 & 17,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,
KOOTENAI COUNTY, IDAHO
AUGUST 2001

SHEET FOUR OF ELEVEN

BK I pg 200c
#161812

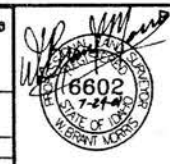


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**ENGINEERS
SURVEYORS
&
PLANNERS**

**FINAL FLAT OF BLACK ROCK
KOOTENAI COUNTY, IDAHO**

DRAWN BY: JDN	DATE: 7/24/01	DWG. NO. 00-0048PLAT-AC	SHEET 4 of 11
DD-0048	DATE: 7/24/01	SCALE: 1" = 200'	CK BY:



- LEGEND**
- SET 5/8" x 30" REBAR W/ PLASTIC CAP MARKED "INC PLS 6602" TO BE SET ON OR BEFORE JULY 1, 2002
 - FOUND 5/8" REBAR WITH PLASTIC CAP MARKED "PLS 5289" UNLESS OTHERWISE NOTED
 - SET 5/8" x 30" REBAR W/ PLASTIC CAP MARKED "INC PLS 6602"
 - ⊙ FOUND MONUMENT AS REFERENCED PER R-1 & R-2, REPLACED WITH 5/8" x 30" REBAR W/ PLASTIC CAP MARKED "INC PLS 6602"
 - ◇ COMPUTED POINT-NOT SET
 - FOUND CENTER QUARTER CORNER

THE PURPOSE OF THIS SHEET IS TO DETAIL A PORTION OF CLUB HOUSE DRIVE, PORTIONS OF THE GOLF COURSE (TRACT A AND TRACT B), OPEN SPACE (TRACT D).

0948

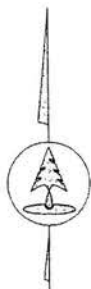
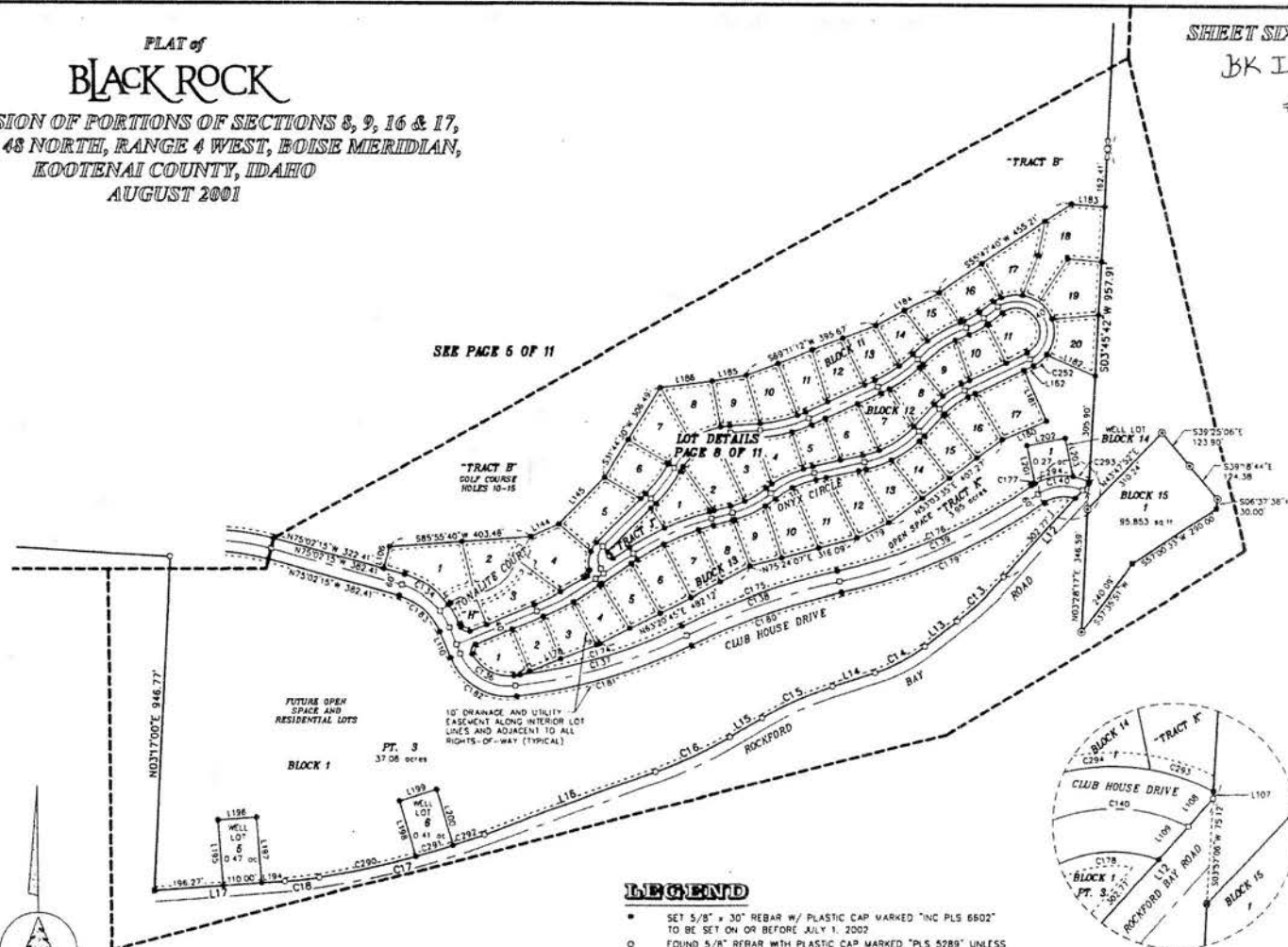
PLAT of **BLACK ROCK**

A SUBDIVISION OF PORTIONS OF SECTIONS 8, 9, 16 & 17,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,
KOOTENAI COUNTY, IDAHO
AUGUST 2001

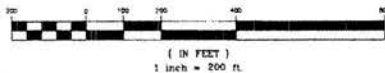
SHEET SIX OF ELEVEN

BK I pg 299E

#1691892



GRAPHIC SCALE

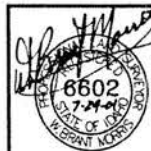


Lots 5 & 6, Block 1 and Lot 1, Block 14 are reserved for wells to serve the Black Rock
211.0. Construction on these lots is restricted to the components required for operation
of a domestic water well to conform to Idaho Department of Environmental Quality
requirements for a domestic water well for a community water system.

THE PURPOSE OF THIS SHEET IS TO DETAIL A
PORTION OF CLUB HOUSE DRIVE, A PORTION OF THE
GOLF COURSE (TRACT B), THE SALES OFFICE LOT AND
BLOCKS AND OPEN SPACE TRACT K

LEGEND

- SET 5/8" x 30" REBAR W/ PLASTIC CAP MARKED "INC PLS 6602"
TO BE SET ON OR BEFORE JULY 1, 2002
- FOUND 5/8" REBAR WITH PLASTIC CAP MARKED "PLS 5289" UNLESS
OTHERWISE NOTED
- SET 5/8" x 30" REBAR W/ PLASTIC CAP MARKED "INC PLS 6602"
FOUND MONUMENT AS REFERENCED PER R-1 & R-2, REPLACED
WITH 5/8" x 30" REBAR W/ PLASTIC CAP MARKED "INC PLS 6602"
- COMPUTED POINT-NOT SET
- DOZ FOUND QUARTER CORNER AS NOTED



Island Northwest Consultants
PHONE (208) 773-8378 • FAX (208) 773-2128
• 628 POST STREET, POST FALLS, IDAHO •
E-MAIL: islandnw@idlink.com

ENGINEERS
SURVEYORS
&
PLANNERS

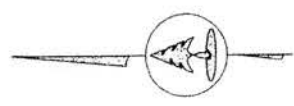
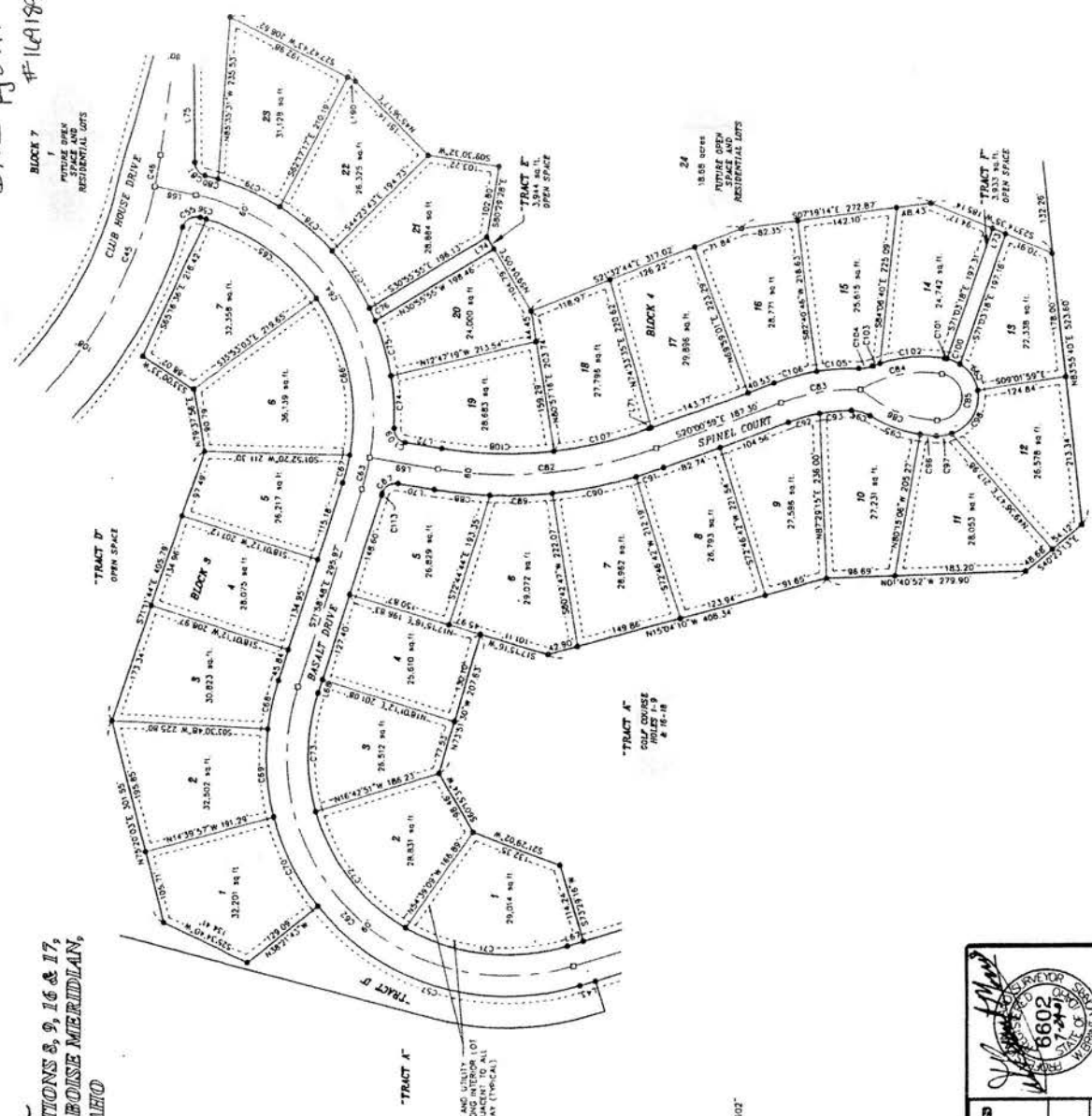
FINAL PLAT OF BLACK ROCK
KOOTENAI COUNTY, IDAHO

DRAWN BY: JOM DATE: 7/24/01 DWS NO. 00-040PLAT-6C SHEET 6 of 11
00-0048 DATE: 7/24/01 SCALE: 1" = 200' CK BY:

0950

SHEET SEVEN OF ELEVEN
 Bk I Pg 299 F
 BLOCK 7 # 141892

FLAT of
BLACK ROCK
 A SUBDIVISION OF PORTIONS OF SECTIONS 8, 9, 16 & 17,
 TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,
 KOOTENAI COUNTY, IDAHO
 AUGUST 2001



LEGEND
 * SET 5/8" x 30" REBAR W/ PLASTIC CAP MARKED "MC PLS 8602"
 TO BE SET ON OR BEFORE JULY 1, 2002.
 □ COMPUTED POINT-NOT SET

THE PURPOSE OF THIS SHEET IS TO DEFINE BLOCKS
 3, 4 AND OPEN SPACE TRACT E AND TRACT F

Maland Northwest Consultants
 PHONE (208) 777-4179 • FAX (208) 777-3118
 435 POST STREET, POST FALLS, IDAHO
 E-MAIL: Maland@maland.com

6602
 KOOTENAI COUNTY, IDAHO

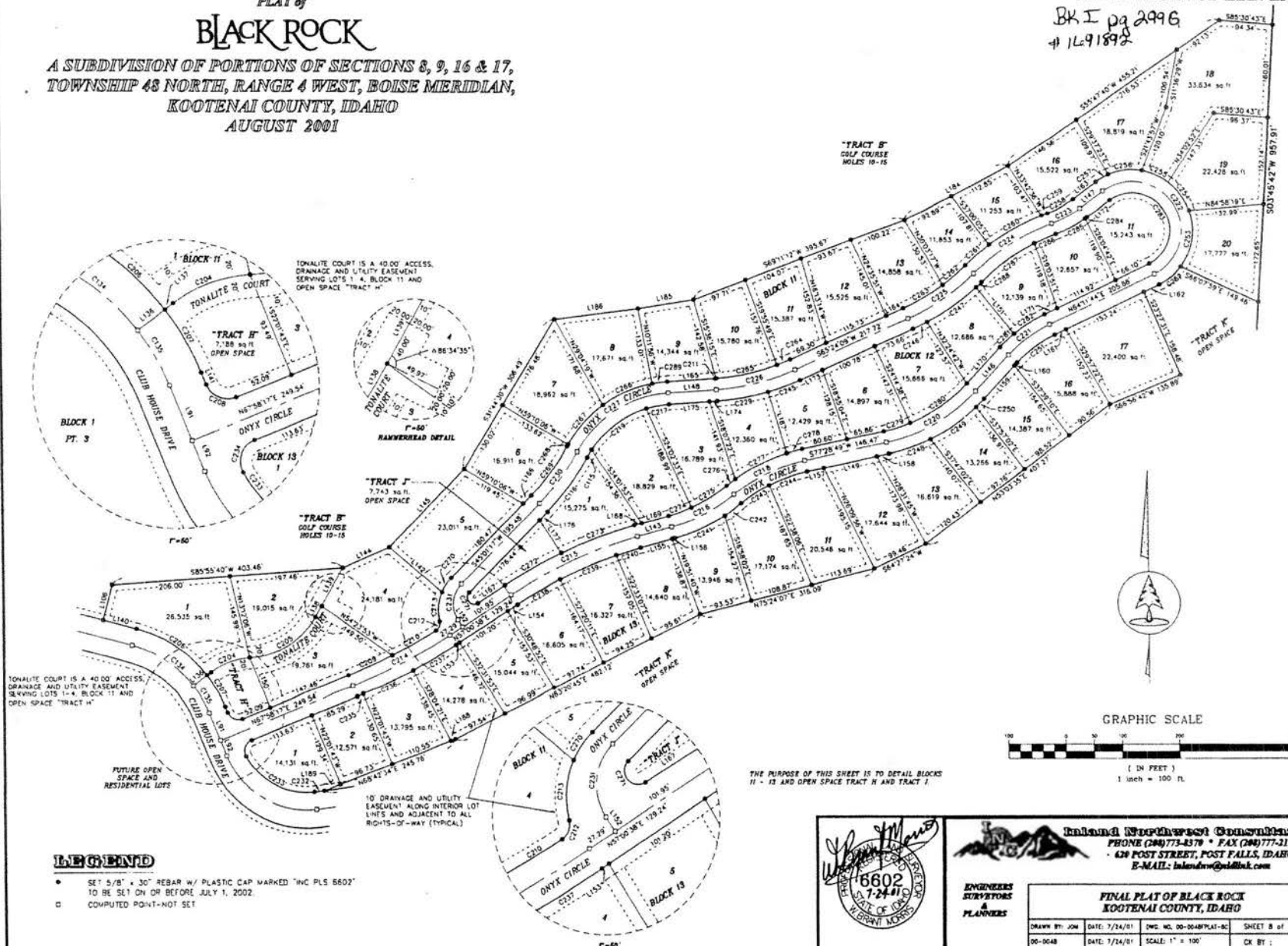
FINAL PLAT OF BLACK ROCK KOOTENAI COUNTY, IDAHO			
DRAWN BY: JRM	DATE: 7/24/01	REV. NO.: 00-000001-01	SHEET 7 of 11
CHECKED BY: JRM	DATE: 7/24/01	SCALE: 1" = 100'	CUR. BY: J

ENGINEERS
 SURVEYORS
 PLANNERS

Maland Northwest Consultants

A SUBDIVISION OF PORTIONS OF SECTIONS 8, 9, 16 & 17,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,
KOOTENAI COUNTY, IDAHO
AUGUST 2001

BK I pg 299G
1491892



0952

FLAT of BLACK ROCK

A SUBDIVISION OF PORTIONS OF SECTIONS 8, 9, 16 & 17,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,
KOOTENAI COUNTY, IDAHO
AUGUST 2001

LINE DATA

LINE	BEARING	LENGTH	LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
1	S88°32'26"E	188.63	181	N89°28'30"W	184.59	1181	N84°11'44"E	22.27
2	S83°36'33"E	219.42	182	N40°52'12"E	95.83	1182	N84°11'44"E	35.38
3	S88°19'13"E	172.84	183	N44°58'03"W	205.12	1183	S82°46'31"W	51.05
4	S86°10'50"E	272.24	184	N15°28'36"W	47.83	1184	S85°24'09"W	37.69
5	S80°21'42"E	119.87	185	N40°59'27"E	276.36	1185	S85°33'02"E	84.78
6	S84°44'28"E	101.79	186	S38°01'09"E	123.92	1186	S43°00'77"W	20.30
7	N48°33'38"E	209.94	187	N69°08'14"E	151.89	1187	N57°00'38"E	56.68
8	S55°31'42"W	299.58	188	N15°40'54"E	130.94	1188	N74°16'27"E	13.55
9	N61°02'01"E	208.46	189	N40°58'04"W	201.74	1189	N2°47'22"E	41.02
10	S2°45'34"W	475.50	190	N88°03'23"W	120.96	1190	N42°31'55"E	86.88
11	N89°21'52"E	298.90	191	N22°01'43"W	51.38	1191	N84°11'44"E	24.87
12	N47°19'21"E	172.23	192	N22°01'43"W	28.68	1192	S82°46'31"W	51.05
13	N52°18'30"E	177.86	193	S42°14'51"E	108.69	1193	S85°24'09"W	37.69
14	N71°48'00"E	127.88	194	N61°52'22"E	122.64	1194	S85°33'02"E	84.78
15	N58°34'00"E	107.75	195	S04°36'32"W	81.80	1195	S85°33'02"E	84.78
16	N22°25'34"E	321.15	196	N44°58'03"W	205.12	1196	S43°00'77"W	20.30
17	S85°25'17"W	172.23	197	N15°28'36"W	47.83	1197	S43°00'77"W	20.30
18	S49°25'52"W	134.51	198	S40°05'13"W	276.36	1198	N84°11'44"E	24.87
19	N02°29'11"E	19.55	199	S38°01'09"E	34.62	1199	S85°33'02"E	84.78
20	S44°06'51"E	150.85	200	S32°48'42"E	30.00	1200	S85°33'02"E	84.78
21	S85°25'17"W	172.23	201	S32°48'42"E	30.00	1201	S85°33'02"E	84.78
22	S82°45'34"E	54.69	202	S38°01'09"E	30.07	1202	S85°33'02"E	84.78
23	S69°18'58"W	89.97	203	N15°40'54"E	135.94	1203	S85°33'02"E	84.78
24	S69°25'58"W	89.97	204	N40°58'04"W	201.74	1204	S85°33'02"E	84.78
25	S85°25'17"W	172.23	205	N88°03'23"W	120.96	1205	S85°33'02"E	84.78
26	N02°05'41"E	30.79	206	N15°40'54"E	57.89	1206	S85°33'02"E	84.78
27	N02°05'41"E	30.79	207	S04°36'32"W	4.79	1207	S85°33'02"E	84.78
28	N82°19'31"E	108.85	208	N42°19'24"E	26.80	1208	S85°33'02"E	84.78
29	N80°02'29"E	108.85	209	N73°19'24"E	31.86	1209	S85°33'02"E	84.78
30	N04°36'32"E	10.09	210	N22°01'43"W	80.22	1210	S85°33'02"E	84.78
31	N04°36'32"E	91.80	211	N88°03'23"W	120.96	1211	S85°33'02"E	84.78
32	S72°46'04"E	186.78	212	N40°58'04"W	201.74	1212	S85°33'02"E	84.78
33	S78°12'23"E	207.85	213	N15°40'54"E	159.94	1213	S85°33'02"E	84.78
34	S04°36'32"E	79.36	214	S30°35'11"E	142.10	1214	S85°33'02"E	84.78
35	N88°29'24"E	184.12	215	N89°08'14"E	111.89	1215	S85°33'02"E	84.78
36	S78°25'42"E	207.87	216	S40°05'13"W	74.04	1216	S85°33'02"E	84.78
37	N42°33'02"E	67.87	217	S40°05'13"W	202.33	1217	S85°33'02"E	84.78
38	S61°18'30"E	216.42	218	N15°28'36"W	142.83	1218	S85°33'02"E	84.78
39	S32°00'32"E	88.02	219	N44°58'03"W	205.12	1219	S85°33'02"E	84.78
40	N79°32'46"E	80.79	220	S04°36'32"W	2.35	1220	S85°33'02"E	84.78
41	S25°34'45"W	134.41	221	N22°01'43"W	179.97	1221	S85°33'02"E	84.78
42	N38°21'43"E	129.09	222	N20°31'48"E	66.92	1222	S85°33'02"E	84.78
43	N16°30'44"E	23.06	223	N53°28'48"E	97.42	1223	S85°33'02"E	84.78
44	N71°28'15"E	45.26	224	N22°01'43"W	16.95	1224	S85°33'02"E	84.78
45	S16°30'44"E	23.06	225	N53°28'48"E	97.42	1225	S85°33'02"E	84.78
46	N16°30'44"E	184.88	226	N73°19'24"E	20.00	1226	S85°33'02"E	84.78
47	N16°16'12"E	28.36	227	N73°19'24"E	20.00	1227	S85°33'02"E	84.78
48	N74°32'48"E	30.07	228	N53°28'48"E	97.42	1228	S85°33'02"E	84.78
49	N74°32'48"E	30.07	229	N53°28'48"E	16.95	1229	S85°33'02"E	84.78
50	N19°16'12"E	24.36	230	S19°08'14"E	37.69	1230	S85°33'02"E	84.78
51	N16°30'44"E	184.88	231	N16°30'44"E	3.28	1231	S85°33'02"E	84.78
52	S73°29'16"W	114.24	232	N77°30'18"E	181.60	1232	S85°33'02"E	84.78
53	S21°28'02"E	123.35	233	S80°00'28"E	89.44	1233	S85°33'02"E	84.78
54	S40°15'34"E	188.46	234	S84°29'14"E	102.16	1234	S85°33'02"E	84.78
55	N73°31'30"E	207.83	235	S105°25'42"E	80.13	1235	S85°33'02"E	84.78
56	S17°15'16"E	101.11	236	N54°38'32"E	30.00	1236	S85°33'02"E	84.78
57	S20°23'13"E	102.80	237	N54°38'32"E	30.00	1237	S85°33'02"E	84.78
58	S21°14'30"E	185.14	238	S29°24'20"E	22.49	1238	S85°33'02"E	84.78
59	N50°04'02"E	124.79	239	S29°24'20"E	75.81	1239	S85°33'02"E	84.78
60	S80°29'28"E	102.80	240	N75°02'15"E	80.00	1240	S85°33'02"E	84.78
61	S09°20'32"E	102.22	241	N22°01'43"W	11.38	1241	S85°33'02"E	84.78
62	N45°26'15"E	151.14	242	S49°42'54"E	119.43	1242	S85°33'02"E	84.78
63	S27°42'43"E	206.62	243	N74°36'27"E	62.58	1243	S85°33'02"E	84.78
64	N19°16'12"E	26.36	244	N66°30'11"E	86.26	1244	S85°33'02"E	84.78
65	N16°30'44"E	187.72	245	S44°19'33"E	180.04	1245	S85°33'02"E	84.78
66	N12°23'12"E	60.49	246	N44°21'54"E	85.88	1246	S85°33'02"E	84.78
67	N16°30'44"E	23.06	247	S52°48'31"W	51.05	1247	S85°33'02"E	84.78
68	S71°38'48"E	19.96	248	S85°33'02"E	84.78	1248	S85°33'02"E	84.78
69	S09°21'34"E	100.44	249	N77°28'49"E	91.93	1249	S85°33'02"E	84.78
70	S09°21'34"E	53.74	250	S22°01'43"W	93.49	1250	S85°33'02"E	84.78
71	N50°00'59"E	3.00	251	S38°04'27"E	104.78	1251	S85°33'02"E	84.78
72	S09°21'34"E	53.74	252	S32°52'22"E	14.60	1252	S85°33'02"E	84.78
73	N23°14'35"E	20.06	253	N97°00'38"E	7.37	1253	S85°33'02"E	84.78
74	N59°04'02"E	141.88	254	N15°28'36"E	20.00	1254	S85°33'02"E	84.78
75	N81°17'02"E	141.88	255	N74°36'27"E	57.62	1255	S85°33'02"E	84.78
76	S19°02'24"E	207.85	256	N74°36'27"E	4.95	1256	S85°33'02"E	84.78
77	N57°00'38"E	87.97	257	N77°28'49"E	29.87	1257	S85°33'02"E	84.78
78	S24°32'48"E	95.53	258	N77°28'49"E	21.54	1258	S85°33'02"E	84.78
79	S24°32'48"E	79.20	259	N42°31'55"E	60.31	1259	S85°33'02"E	84.78
80	S31°41'48"E	140.45	260	N42°31'55"E	5.57	1260	S85°33'02"E	84.78

CURVE DATA

SHEET NINE OF ELEVEN

BK I pg 249 H #1019192

CURVE	LENGTH	RADIUS	CHORD	TANGENT	BEARING	DELTA
C1	150.71	2048.74	150.67	75.39	N84°44'59"E	47°32'34"
C2	224.37	2069.79	224.28	112.30	S82°44'53"E	81°17'40"
C3	161.82	1302.74	161.80	80.93	N82°44'53"E	2°48'23"
C4	231.50	577.08	229.58	117.73	S72°11'16"W	20°28'08"
C5	232.65	230.88	230.88	118.14	S72°38'00"E	24°32'46"
C6	338.32	689.49	336.70	173.39	N80°42'12"E	23°08'23"
C7	302.71	961.98	301.47	152.81	N57°03'24"E	17°59'31"
C8	241.17	1850.37	241.00	120.76	S51°47'40"W	7°28'04"
C9	270.42	245.53	268.86	150.77	S87°04'50"W	63°08'15"
C10	286.13	331.50	277.33	152.66	S88°05'41"E	49°27'16"
C11	378.98	815.89	375.56	192.96	N55°21'18"E	28°36'45"
C12	100.36	1730.84	100.35	50.20	N40°24'15"E	3°19'20"
C13	181.52	1061.97	181.50	90.88	N47°11'27"E	8°47'36"
C14	162.20	472.14	161.40	81.91	N61°37'30"E	18°41'00"
C15	221.58	897.74	221.13	111.25	S65°26'05"W	17°43'51"
C16	235.22	1186.70	234.84	118.00	N84°44'52"E	11°21'25"
C17	488.44	2716.47	484.78	243.37	N23°32'44"E	50°14'20"
C18	88.77	1075.71	88.73	44.42	N83°17'43"E	3°35'38"
C19	349.33	430.50	340.17	185.19	S20°48'50"E	48°36'03"
C20	14.63	1810.84	14.63	7.02	N26°20'18"E	0°28'50"
C21	80.43	1700.84	80.42	30.22	N36°46'54"E	3°35'38"
C22	99.42	334.07	99.05	50.08	S44°17'25"W	17°03'06"
C23	129.77	76.16	110.22	89.04	S87°31'56"W	103°31'34"
C24	124.53	324.07	123.65	63.14	S47°18'44"E	23°27'44"
C25	11.13	204.07	11.13	5.56	N69°19'17"W	2°04'49"
C26	51.91	25.68	43.51	40.96	S71°21'17"W	115°49'38"
C27	128.25	887.88	128.07	64.31	S46°03'03"E	10°40'58"
C28	85.10	160.23	85.08	45.59	S68°23'01"E	28°28'10"
C29	230.73	455.80	228.78	117.88	N84°02'15"E	33°00'41"
C30	54.96	227.54	54.82	27.82	S16°39'35"E	14°05'15"
C31	122.86	651.88	122.48	61.51	S46°03'03"E	10°40'58"
C32	73.75	140.23	73.54	37.56	S68°23'01"E	28°28'10"
C33	215.50	425.80	213.25	110.13	N84°02'15"E	33°00'41"
C34	66.76	253.54	66.57	33.57	S77°03'15"E	15°09'10"
C35	133.85	71.88	133.65	67.12	S46°03'03"E	10°40'58"
C36	154.80	260.13	154.62	78.53	S68°23'01"E	28°28'10"
C37	245.92	485.80	243.30	125.65	N84°02'15"E	33°00'41"
C38	43.15	183.54	43.06	21.67	S16°39'35"E	14°05'15"
C39	144.34	33.50	143.21	73.33	S73°50'30"E	24°36'52"
C40	141.73	337.50	140.71	71.98	N84°02'15"E	33°00'41"
C41	81.16	3303.74	81.16	40.58	N86°43'04"E	17°42'27"
C42	80.66	3303.74	80.66	40.33	N86°43'04"E	17°42'27"
C43	136.87	81.88	136.71	65.59	N47°22'18"E	6°36'47"
C44	242.10	813.89	241.21	121.84	N60°40'39"E	17°00'04"
C45	336.87	600.00	332.47	173.01	N82°11'17"E	32°00'00"
C46	45.95	600.00	45.94	22.98	N80°27'53"E	42°18'18"
C47	1048.12	11320.00	1019.29	565.98	N55°50'58"E	53°17'06"
C48	305.18	546.00	301.20	158.68	S62°26'48"E	32°02'21"
C49	1044.12	1500.00	1000.63	560.63	N55°50'58"E	53°17'06"
C50	117.46	230.00	115.78	60.48	N121°23'57"E	33°36'56"
C51	115.14	230.00	113.84	58.80	N141°46'18"E	28°40'58"
C52	19.94	230.00	19.93	9.97	N02°07'32"E	4°57'58"
C53	184.94	675.00	183.63	96.82	N78°20'56"E	21°19'38"
C54	317.95	634.00	314.86	163.20	N50°07'32"E	37°42'58"
C55	30.88	200.00	29.90	14.97	N29°43'50"E	88°21'72"
C56	8.75	300.00	8.75	4.88	N51°25'30"E	13°47'47"
C57	168.13	352.70	167.29	238.75	S17°13'44"W	58°59'04"
C58	219.18	352.78	216.59	112.49	S09°02'37"E	27°00'00"
C59	331.00	530.00	325.84	171.10	N01°22'44"E	26°56'56"
C60	368.47	590.00	362.51	190.45	N01°22'44"E	35°45'56"
C61	347.93	560.00	344.07	186.78	N01°22'44"E	35°45'56"
C62	345.52	560.00	341.66	186.64	N01°22'44"E	35°45'56"
C63	46.43	330.00	46.39	23.25	S28°00'37"E	83°08'38"
C64	506.27	332.00	458.05	318.13	N56°36'31"E	87°34'43"
C65	702.33	300.00	188.52	105.18	N79°40'41"E	28°38'54"
C66	184.42	330.00	174.24	87.74	N71°14'20"E	27°42'54"
C67	101.20	300.00	41.16	20.63	S75°54'30"E	73°02'05"
C68	71.41	350.00	71.29	35.83	N77°49'31"E	11°41'27"
C69	128.25	350.00	123.54	64.85	S82°49'54"W	20°19'42"
C70	144.75	350.00	137.43	67.53	S82°29'13"W	20°19'42"
C71	238.48	280.00	231.82	126.45	S02°02'47"E	47°03'07"
C72	271.87	280.00	217.87	114.42	S52°06'13"E	43°03'51"
C73	173.87	280.00	171.27	89.63	N89°09'20"W	34°10'21"
C74	25.13	360.00	25.13	0.91	N88°20'13"E	21°21'03"
C75	82.40	360.00	82.40	3.23	N12°32'13"E	21°21'03"
C76	20.14	350.00	20.14	10.57	N65°45'57"E	32°12'08"
C77	102.32	360.00	99.00	50.49	S58°07'49"E	15°52'58"
C78	102.32	360.00	99.00	50.49	N40°09'52"E	15°52'58"
C79	102.32	360.00	99.00	50.49	N41°11'52"E	15°52'58"
C80	16.07	360.00	16.07	9.54	N41°41'52"E	35°02'07"

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11/18/12

FLAT of

BLACK ROCK

A SUBDIVISION OF PORTIONS OF SECTIONS 8, 9, 16 & 17,
TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN,
KOOTENAI COUNTY, IDAHO
AUGUST 2001

CURVE DATA

CURVE	LENGTH	RADIUS	CHORD	TANGENT	BEARING	DELTA
C141	98.81	310.00	58.24	48.87	N85°52'32"E	171°51'
C142	58.89	310.00	35.89	29.45	S85°52'32"E	171°51'
C143	58.89	310.00	35.89	29.45	S85°52'32"E	171°51'
C144	51.33	280.00	31.14	25.86	S82°10'36"E	143°48'
C145	29.81	420.00	19.86	15.01	N89°28'22"E	81°22'
C146	29.81	420.00	19.86	15.01	N89°28'22"E	81°22'
C147	105.97	420.00	105.89	53.37	N84°26'38"E	147°23'
C148	77.08	370.00	76.88	38.72	N102°14'32"E	134°23'
C149	97.84	370.00	97.48	48.30	N44°55'24"E	173°02'
C150	97.84	370.00	97.48	48.30	N44°55'24"E	173°02'
C151	83.18	270.00	82.89	42.08	N53°20'45"E	173°02'
C152	48.63	106.00	48.18	25.28	N55°48'58"E	88°43'
C153	103.67	106.00	101.35	57.89	N58°48'42"E	97°58'58"
C154	103.67	106.00	101.35	57.89	N58°48'42"E	97°58'58"
C155	50.97	106.00	49.59	25.70	N46°52'48"E	73°28'51"
C156	61.31	106.00	59.45	31.54	N48°52'38"E	73°28'51"
C157	25.43	106.00	25.37	12.78	N58°28'37"E	154°45'
C158	25.43	106.00	25.37	12.78	N58°28'37"E	154°45'
C159	1.65	470.00	1.65	1.65	N48°20'10"E	173°28'
C160	106.81	470.00	106.33	53.59	N50°16'13"E	143°23'55"
C161	25.57	470.00	25.53	12.83	N48°20'10"E	173°28'
C162	25.57	470.00	25.53	12.83	N48°20'10"E	173°28'
C163	86.33	380.00	86.17	40.33	N48°20'10"E	173°28'
C164	25.14	380.00	25.13	12.57	N67°17'31"E	34°23'
C165	109.75	380.00	109.36	52.76	N77°22'58"E	163°30'
C166	89.77	380.00	89.31	45.81	N66°20'30"E	250°11'
C167	89.77	380.00	89.31	45.81	N66°20'30"E	250°11'
C168	3.89	200.00	3.89	1.55	N48°20'12"E	170°48'
C169	107.39	200.00	107.03	54.05	N48°20'12"E	170°48'
C170	3.87	80.00	3.87	15.01	N44°22'50"E	217°14'
C171	3.87	80.00	3.87	15.01	N44°22'50"E	217°14'
C172	114.35	870.00	114.36	57.77	N50°20'00"E	278°24'
C173	137.49	870.00	137.33	68.81	N58°48'13"E	338°24'
C174	47.56	870.00	47.54	23.33	N62°15'03"E	86°49'
C175	47.56	870.00	47.54	23.33	N62°15'03"E	86°49'
C176	18.61	330.00	18.61	9.81	N55°21'30"E	330°00'
C177	10.28	330.00	10.28	5.08	N42°12'05"E	180°24'
C178	48.72	330.00	48.52	24.35	N71°38'36"E	57°48'
C179	122.31	330.00	121.24	62.09	N45°02'08"E	250°08'
C180	31.48	330.00	31.45	17.26	N44°18'30"E	77°51'
C181	31.48	330.00	31.45	17.26	N44°18'30"E	77°51'
C182	270.90	84.00	270.00	131.35	N31°30'53"E	103°13'
C183	3.83	270.00	3.83	1.87	N53°14'55"E	0°46'45"
C184	59.17	270.00	58.99	28.76	N52°24'24"E	152°24'
C185	59.17	270.00	58.99	28.76	N52°24'24"E	152°24'
C186	115.75	380.00	115.34	58.58	N48°20'10"E	173°28'
C187	115.75	380.00	115.34	58.58	N48°20'10"E	173°28'
C188	76.47	270.00	76.45	37.25	N42°28'14"E	63°33'
C189	76.47	270.00	76.45	37.25	N42°28'14"E	63°33'
C190	100.67	270.00	100.60	50.01	N71°35'40"E	235°31'
C191	95.32	270.00	95.21	47.81	N77°22'58"E	200°30'
C192	47.85	155.07	47.74	24.17	N77°22'58"E	174°30'
C193	112.45	155.07	110.05	58.83	N78°29'32"E	41°27'47"

CURVE	LENGTH	RADIUS	CHORD	TANGENT	BEARING	DELTA
C194	6.32	310.00	6.32	3.18	N45°20'31"E	714°38'
C195	6.32	310.00	6.32	3.18	N45°20'31"E	714°38'
C196	175.34	870.00	175.05	87.97	N45°20'31"E	113°21'
C197	175.34	870.00	175.05	87.97	N45°20'31"E	113°21'
C198	9.15	870.00	9.15	4.58	N48°20'14"E	0°26'15"
C199	27.42	870.00	27.42	13.71	N48°20'14"E	0°26'15"
C200	27.42	870.00	27.42	13.71	N48°20'14"E	0°26'15"
C201	157.71	870.00	157.38	78.31	N48°20'14"E	131°17'
C202	247.87	870.00	246.56	125.37	N79°33'27"E	203°05'
C203	247.87	870.00	246.56	125.37	N79°33'27"E	203°05'
C204	83.75	270.00	83.73	42.34	N79°33'27"E	203°05'
C205	83.75	270.00	83.73	42.34	N79°33'27"E	203°05'
C206	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C207	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C208	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C209	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C210	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C211	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C212	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C213	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C214	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C215	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C216	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C217	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C218	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C219	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C220	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C221	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C222	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C223	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C224	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C225	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C226	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C227	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C228	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C229	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C230	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C231	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C232	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C233	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C234	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C235	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C236	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C237	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C238	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C239	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C240	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C241	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C242	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C243	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C244	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C245	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C246	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C247	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C248	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C249	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"
C250	182.80	185.00	182.84	91.33	N43°30'43"E	450°55'15"

Boise State University
16602
JUL 15 2012
MOUNTAIN VIEW

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OWNER'S CERTIFICATE

Know all men by these presents that CAG Investments, LLC, a Colorado Limited Liability Company, and Black Rock Development, Inc., an Idaho Corporation, hereby certify that they own and have full title to the land embraced in the within Plat to be known as BLACK ROCK, a parcel of and being portions of Sections 8, 9, 16 and 17, Township 48 North, Range 4 West, Boise Meridian, Kootenai County Idaho, more particularly described as follows:

COMMENCING at an iron rod monument marking the West Quarter corner, said Section 8, from which an azimuth and monument marking the Southwest corner thereof bears S 03°15'27" W a distance of 2679.95 feet, thence, S 88°49'28" E along the North line of the Southwest Quarter, said Section 8, a distance of 331.34 feet to an iron pin with a 7/8" x 27 brass cap stamped "BLACK ROCK ROD NO. 165 6502 7001", being a point on the South Right-of-Way line of Lot's Bay Road, and the True POINT-OF-BEGINNING for this description.

Thence, in an easterly direction, along said southerly Right-of-Way line, the following courses:
1. S 88°49'28" E a distance of 198.63 feet to the beginning of a curve concave southerly, having a radius of 2048.74 feet, the long chord of which bears S 84°42'58" E a distance of 150.67 feet;
2. Lastly along said curve, through a central angle of 47°53'31", a distance along the arc of 150.71 feet;
3. S 82°36'13" E a distance of 219.43 feet to the beginning of a curve concave northerly, having a radius of 2069.79 feet, the long chord of which bears S 85°42'53" E a distance of 224.26 feet;
4. Lastly along said curve, through a central angle of 67°42'45", a distance along the arc of 224.37 feet;
5. S 88°49'13" E a distance of 127.94 feet to the beginning of a curve concave southerly, having a radius of 3303.74 feet, the long chord of which bears S 87°25'01" E a distance of 161.80 feet;
6. Lastly along said curve, through a central angle of 248°23", a distance along the arc of 181.82 feet;
7. S 88°00'50" E a distance of 532.94 feet to the beginning of a curve concave southerly, having a radius of 517.08 feet, the long chord of which bears S 73°11'16" E a distance of 228.58 feet;
8. Lastly along said curve, through a central angle of 25°39'08", a distance along the arc of 231.50 feet;
9. S 50°21'42" E a distance of 119.87 feet to the beginning of a curve concave northerly, having a radius of 543.06 feet, the long chord of which bears S 72°38'05" E a distance of 230.88 feet;
10. Lastly along said curve, through a central angle of 24°32'46", a distance along the arc of 232.65 feet;
11. S 84°54'28" E a distance of 101.79 feet to the beginning of a curve concave northerly, having a radius of 865.49 feet, the long chord of which bears N 80°34'21" E a distance of 335.70 feet;
12. Lastly along said curve, through a central angle of 29°02'23", a distance along the arc of 339.32 feet to the beginning of a compound curve concave northerly, having a radius of 963.99 feet, the long chord of which bears N 87°03'24" E a distance of 301.47 feet;
13. Lastly along said curve, through a central angle of 17°59'31", a distance along the arc of 302.71 ft;
14. N 48°05'38" E a distance of 209.84 feet to the beginning of a curve concave southerly, having a radius of 331.50 feet, the long chord of which bears N 51°47'40" E a distance of 241.00 feet;
15. Lastly along said curve, through a central angle of 7°28'04", a distance along the arc of 241.17 feet;
16. N 55°31'42" E a distance of 299.88 feet to the beginning of a curve concave southerly, having a radius of 245.53 feet, the long chord of which bears N 87°04'50" E a distance of 256.86 feet;
17. Lastly along said curve, through a central angle of 63°06'15", a distance along the arc of 270.42 feet;
18. S 61°22'03" E a distance of 208.46 feet to the beginning of a curve concave northerly, having a radius of 331.50 feet, the long chord of which bears S 86°05'41" E a distance of 277.33 feet;
19. Lastly along said curve, through a central angle of 49°27'16", a distance along the arc of 286.13 feet to the beginning of a compound curve concave northerly, having a radius of 815.80 feet, the long chord of which bears N 55°52'19" E a distance of 375.56 feet;
20. Lastly along said curve, through a central angle of 26°36'45", a distance along the arc of 378.96 ft;
21. N 42°33'56" E a distance of 725.95 feet to the beginning of a curve concave northerly, having a radius of 1730.84 feet, the long chord of which bears N 40°54'16" E a distance of 100.35 feet;
22. Lastly along said curve, through a central angle of 319°20", a distance along the arc of 100.36 feet to the intersection of said southerly Right-of-Way line with the East line of the Northeast Quarter, said Section 8.

Thence, N 03°45'34" E along said East line a distance of 415.50 feet to the northwest corner of Government Lot 5, said Section 9.

Thence, N 89°21'32" E along the North line thereof a distance of 298.90 feet.

Thence, S 87°41'39" E, continuing along said line, a distance of 958.51 feet to the northeast corner thereof.

Thence, S 02°05'41" W along the East line thereof a distance of 880.08 feet.

Thence, S 84°72'57" E a distance of 1291.20 feet to a point on the East line of Government Lot 6, said Sec. 9.

Thence, S 02°18'52" W along said East line a distance of 858.52 feet to the southeast corner thereof.

Thence, S 03°26'51" W along the East line of the Southwest Quarter, said Section 9, a distance of 2619.39 feet to the South Quarter corner thereof.

Thence, S 03°45'42" W along the East line of the Northwest Quarter, said Section 16, a distance of 957.91 feet to the intersection of said East line with the northerly Right-of-Way line of Rockford Bay Road.

Thence, southerly along said northerly Right-of-Way line, the following courses:

1. S 47°19'24" W a distance of 351.23 feet to the beginning of a curve concave northerly, having a radius of 1061.97 feet, the long chord of which bears S 47°13'12" W a distance of 181.30 feet;
2. Southwesterly along said curve, through a central angle of 9°47'36", a distance along the arc of 181.52 feet;
3. S 57°07'00" W a distance of 117.96 feet to the beginning of a curve concave northerly, having a radius of 472.14 feet, the long chord of which bears S 61°57'32" W a distance of 181.40 feet;
4. Southwesterly along said curve, through a central angle of 19°41'00", a distance along the arc of 162.20 feet;
5. S 71°48'00" W a distance of 127.85 feet to the beginning of a curve concave southerly, having a radius of 997.24 feet, the long chord of which bears S 65°25'09" W a distance of 221.13 feet;
6. Southwesterly along said curve, through a central angle of 12°43'51", a distance along the arc of 221.58 feet;
7. S 59°04'09" W a distance of 107.76 feet to the beginning of a curve concave northerly, having a radius of 1186.70 feet, the long chord of which bears S 64°44'52" W a distance of 234.84 feet;
8. Southwesterly along said curve, through a central angle of 11°21'25", a distance along the arc of 235.77 feet;
9. S 70°25'34" W a distance of 521.16 feet to the beginning of a curve concave northerly, having a radius of 2716.47 feet, the long chord of which bears S 75°32'44" W a distance of 484.78 feet;
10. Westerly along said curve, through a central angle of 10°14'20", a distance along the arc of 485.44 feet to the beginning of a compound curve concave northerly, having a radius of 1075.71 feet, the long chord of which bears S 83°17'45" W a distance of 38.73 feet;
11. Southwesterly along said curve, through a central angle of 5°15'38", a distance along the arc of 98.77 feet;
12. S 85°35'32" W a distance of 372.25 feet to the intersection of said northerly Right-of-Way line with the West line of the Northwest Quarter, said Section 16.

Thence, N 03°77'00" E along said West line a distance of 946.77 feet.

Thence, N 86°45'21" W a distance of 858.85 feet.

Thence, N 03°15'14" E a distance of 1309.07 feet to the South line, said Section 8.

Thence, N 86°44'32" W along said line a distance of 1978.13 feet to the South Quarter corner, said Section 8.

Thence, N 86°55'57" W along the South line of the Southwest Quarter said Section 8 a distance of 1321.88 feet.

Thence, N 03°24'39" E a distance of 1308.70 feet.

Thence, N 86°56'26" W a distance of 991.92 feet.

Thence, N 03°14'13" E a distance of 1314.32 feet to the True POINT-OF-BEGINNING.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL.

COMMENCING at the aforementioned South Quarter corner, said Section 8; thence, S 03°46'32" W a distance of 1033.03 feet to an iron rod monument marking the intersection of the West line of Tax Parcel No. 3910 with the southerly Right-of-Way line of Rockford Bay Road, the True POINT-OF-BEGINNING for this description.

thence, along the perimeter of said Tax Parcel No. 3910, the following courses:
N 47°47'57" E along said Right-of-Way line a distance of 310.24 feet;
S 29°25'06" E, leaving said Right-of-Way line, a distance of 123.90 feet;
S 39°18'44" E a distance of 124.38 feet;
S 06°37'58" W a distance of 30.00 feet;
S 7°00'33" W a distance of 290.00 feet;
S 37°35'51" W a distance of 240.09 feet;
N 03°28'11" E along said West line of Tax Parcel No. 3910 a distance of 348.59 feet to the True POINT-OF-BEGINNING.

Said described combined parcels contain 659.1 acres (gross), less 2.2 acres of Lot's Bay Road and Black Rock Road Right-of-Way, leaving a net area of 656.9 acres, more or less.

BE IT FURTHER KNOWN THAT:

1. Domestic water service (both potable and non-potable) and sewer service for each lot in this subdivision shall be provided by Black Rock Utilities, Inc.

2. Potable water shall not be used for irrigation purposes.

3. The roads within this subdivision are designated as Private, and shall remain so until such time as said roads are constructed to Highway District Standards and are accepted into the highway district system.

4. Each residential lot shall have building setbacks imposed upon them. These setbacks are recorded in the CCRs for the plat of Black Rock.

5. Double frontage lots on Drys Circle will be restricted to access from one side only. Access will be determined at time of building approval. Residential lots will not have direct access onto Drys Highway Drive.

6. A ten (10) foot drainage and utility easement runs adjacent to all rights-of-way and along the interior lot lines as shown herein.

7. Lots 5 & 6, Block 1 and Lot 1, Block 14 are reserved for wells to serve the Black Rock P.U.D. Construction on these lots is restricted to the components required for operation of a domestic water well to conform to Idaho Department of Environmental Quality requirements for a domestic water well for a community water system.

8. Lots within this plat are subject to CCRs and design guidelines recorded in conjunction with this plat. Instrument numbers 1687709 and 1690505.

9. The plat is subject to the provisions of the Kootenai County Subdivision Ordinance and the conditions imposed by this Board, and is hereby accepted and approved for filing.

10. The plat is subject to the provisions of the Kootenai County Subdivision Ordinance and the conditions imposed by this Board, and is hereby accepted and approved for filing.

11. The plat is subject to the provisions of the Kootenai County Subdivision Ordinance and the conditions imposed by this Board, and is hereby accepted and approved for filing.

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19. The plat is subject to the provisions of the Kootenai County Subdivision Ordinance and the conditions imposed by this Board, and is hereby accepted and approved for filing.

20. The plat is subject to the provisions of the Kootenai County Subdivision Ordinance and the conditions imposed by this Board, and is hereby accepted and approved for filing.

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SHEET ELEVEN OF ELEVEN

FLAT of BK. I pg J

BLACK ROCK

A SUBDIVISION OF PORTIONS OF SECTIONS 8, 9, 16 & 17, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO AUGUST 2001

KOOTENAI COUNTY RECORDER

THE PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF KOOTENAI COUNTY, IDAHO THIS 11th DAY OF August, 2001, AT 11:43 P.M. IN BOOK 1 OF PLATS, PAGE 499 AS INSTRUMENT NO. 1691892

At the request of CAG Investments, Black Rock Dev.

Daniel J. English by [Signature]

KOOTENAI COUNTY RECORDER

Fee \$11.95

COUNTY BOARD OF COMMISSIONERS

THE PLAT MEETS THE REQUIREMENTS OF THE KOOTENAI COUNTY SUBDIVISION ORDINANCE AND THE CONDITIONS IMPOSED BY THIS BOARD, AND IS HEREBY ACCEPTED AND APPROVED FOR FILING.

DATED THIS 16th DAY OF August, 2001.

[Signature]

CHAIRMAN, BOARD OF COMMISSIONERS, KOOTENAI COUNTY, IDAHO

COUNTY TREASURER'S CERTIFICATE

I HEREBY CERTIFY THAT THE TAXES DUE FOR THE PROPERTY DESCRIBED IN THE OWNER'S CERTIFICATE AND DEEDATION HAVE BEEN PAID THROUGH [Signature] DATED THIS 16th DAY OF August, 2001.

[Signature]

KOOTENAI COUNTY TREASURER

COUNTY SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE EXAMINED THE HEREIN PLAT AND CHECKED THE PLAT COMPUTATIONS THEREON AND HAVE DETERMINED THAT THE REQUIREMENTS OF THE STATE CODE PERTAINING TO PLATS AND SURVEYS HAVE BEEN MET.

DATED THIS 16th DAY OF August, 2001.

[Signature]

KOOTENAI COUNTY SURVEYOR

SURVEYOR'S CERTIFICATE

I, W. BRANT MORRIS, P.L.S. #6602, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF IDAHO, DO HEREBY CERTIFY THAT THIS IS A TRUE SURVEY OF THE PLATTED LAND MADE BY ME, OR UNDER MY DIRECT SUPERVISION, AND THAT APPLICABLE CORNER RECORDS HAVE BEEN FILED, IN COMPLIANCE WITH THE LAWS OF THE STATE OF IDAHO.

[Signature]

W. BRANT MORRIS, P.L.S. #6602

DATE 7-29-01

Island Northwest Consultants
PHONE (208) 773-8378 • FAX (208) 777-2128
628 POST STREET, POST FALLS, IDAHO
E-MAIL: islandnw@aol.com

6602
7-29-01
KOOTENAI COUNTY

FINAL PLAT OF BLACK ROCK
KOOTENAI COUNTY, IDAHO
DRAWN BY: MPR DATE: 7/24/01 DWS NO. 00-004PLAT-11C SHEET 11 of 11
00-0048 DATE: 7/24/01 NO SCALE INTENDS CK BY:

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED *B7* #881

2012 FEB 22 PM 4:39

CLERK DISTRICT COURT

Sherry Hubma
DEPUTY

PETER J. SMITH IV
ISB #6997
LUKINS & ANNIS, P.S.
Suite 502
601 E. Front Avenue
Coeur d'Alene, ID 83814-5155
Telephone: (208) 667-0517
Facsimile: (208) 664-4125

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
limited liability company; ROBERT C.
SAMUEL; JOE K. DONALD AND LISBETH
LILLEMORE DONALD, husband and wife;
WAYNE A. GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29, 1991;
RUSSELL M. WICKS AND EVELYN L.
WICKS, husband and wife; BUDDY C.
STANLEY AND JUDITH L. STANLEY,
Trustees of the Stanley Family Trust dated
February 26, 2004; CRAIG R. FALLON AND
M. ELLEN FALLON, husband and wife,

Plaintiffs,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
an Idaho limited liability company,

Defendant.

NO. CV-11-2786

MEMORANDUM IN SUPPORT OF
MOTION FOR DISQUALIFICATION

Plaintiffs file this Memorandum in Support of their Motion for Disqualification.

Plaintiffs are asking Judge Mitchell to disqualify himself from this case.

MEMORANDUM IN SUPPORT OF
MOTION FOR DISQUALIFICATION: 1

L:\BLACK026533\00001\PLDG\BRFS\20120110 MEMORANDUM IN SUPORT OF MOTION FOR DISQUALIFICATION-011012-KMS-

LEGAL AUTHORITY

This motion is made pursuant to Idaho Civil Procedure Rule 40(d)(1)(A)(4), which provides:

Rule 40(d)(2). Disqualification for cause. (A) Grounds. Any party to an action may disqualify a judge or magistrate for cause from presiding in any action upon any of the following grounds:

...
4. That the judge or magistrate is biased or prejudiced for or against any party or the case in the action.

I.R.C.P. Rule 40(d)(2).

Additionally, Rule 40(d)(2)(B) provides:

(B) Motion for Disqualification. Any such disqualification for cause shall be made by a motion to disqualify accompanied by an affidavit of the party or the party's attorney stating distinctly the grounds upon which disqualification is based and the facts relied upon in support of the motion. Such motion for disqualification for cause may be made at any time. The presiding judge or magistrate sought to be disqualified shall grant or deny the motion for disqualification upon notice and hearing in the manner prescribed by these rules for motions.

I.R.C.P. Rule 40(d)(2)(B).

BASIS FOR DISQUALIFICATION

Plaintiffs' attorney recently learned that the Judge in this case recused himself from the case of *Jacklin Land Company vs. Blue Dog RV Inc, et al.*, Kootenai County Case No. CV-2008-0006752 on January 25, 2010. In that case, John F. Magnuson represented the Plaintiff in the matter assigned to Judge Mitchell. The reason for the voluntary judicial disqualification in

MEMORANDUM IN SUPPORT OF

MOTION FOR DISQUALIFICATION: 2

LAB\BLACK028533\00001\PLDG\BRFS\20120110 MEMORANDUM IN SUPORT OF MOTION FOR DISQUALIFICATION-011012-KMS-

the *Jacklin Land Company* case was because John F. Magnuson was also engaged as a conservator to represent the legal interests of the Judge's father. Apparently, the Judge felt that the relationship with John F. Magnuson was grounds for voluntarily disqualification and recused himself from the *Jacklin Land Company* case. Even though substantive rulings had already occurred, that case was reassigned to another judge.

Plaintiffs were unaware of these facts until after this Court had already undertaken and made substantive rulings herein. Given the relationship between John F. Magnuson and the Judge, it appears to Plaintiffs that the Judge may be biased or prejudiced for the Defendant and against the Plaintiffs. This is based solely upon the fact that the Judge previously saw the need for him to voluntarily disqualify himself in another case because of the relationship. It is requested that the Judge take the same steps in this case and similarly disqualify himself from this case because of the same relationship.

CONCLUSION

Based on the foregoing, Plaintiffs move for disqualification of the Judge.

DATED this 22nd day of February, 2012.

LUKINS & ANNIS, P.S.

By 
PETER J. SMITH IV
Attorneys for Plaintiffs

MEMORANDUM IN SUPPORT OF

MOTION FOR DISQUALIFICATION: 3

LAB\BLACK028533\00001\PLDQ\BRFS\20120110 MEMORANDUM IN SUPORT OF MOTION FOR DISQUALIFICATION-011012-KMS-

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of February, 2012, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

John F. Magnuson
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, Idaho 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy (FAX) 208-667-0500

Honorable John T. Mitchell
Kootenai County Courthouse
324 West Garden Avenue
Coeur d'Alene, Idaho 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy (FAX) 208-446-1132



PETER J. SMITH IV

MEMORANDUM IN SUPPORT OF
MOTION FOR DISQUALIFICATION: 4

LAB\BLACK028533\00001\PLDGBRFS\20120110 MEMORANDUM IN SUPORT OF MOTION FOR DISQUALIFICATION-011012-KMS-

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: *BD #881*

2012 FEB 22 PM 4:39

CLERK DISTRICT COURT

Shirley H. [Signature]
DEPUTY

PETER J. SMITH IV
ISB #6997
LUKINS & ANNIS, P.S.
Suite 502
601 E. Front Avenue
Coeur d'Alene, ID 83814-5155
Telephone: (208) 667-0517
Facsimile: (208) 664-4125

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
limited liability company; ROBERT C.
SAMUEL; JOE K. DONALD AND LISBETH
LILLEMORE DONALD, husband and wife;
WAYNE A. GIANOTTI AND CAROLYN M.
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Revocable Trust U-A dated January 29, 1991;
RUSSELL M. WICKS AND EVELYN L.
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STANLEY AND JUDITH L. STANLEY,
Trustees of the Stanley Family Trust dated
February 26, 2004; CRAIG R. FALLON AND
M. ELLEN FALLON, husband and wife,

Plaintiffs,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
an Idaho limited liability company,

Defendant.

NO. CV-2011-2786

MOTION FOR DISQUALIFICATION

The Plaintiffs hereby move for disqualification for cause pursuant to 41(d)(2)(B)

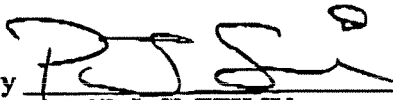
I.R.C.P. This Motion is supported the Memorandum and the Affidavit of Peter J. Smith IV

MOTION FOR DISQUALIFICATION: 1

filed herewith.

DATED this 22nd day of February, 2012.

LUKINS & ANNIS, P.S.

By 
PETER J. SMITH IV
ISB #6997
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

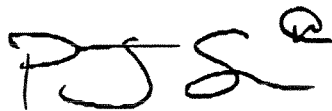
I HEREBY CERTIFY that on the 22nd day of February, 2012, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

John F. Magnuson
Attorney at Law
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PETER J. SMITH IV

MOTION FOR DISQUALIFICATION: 2

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
SD

COUNTY OF KOOTENAI
SD

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CLERK DISTRICT COURT

Patty Bayley
DEPUTY

MISCHELLE R. FULGHAM, ISB #4623
PETER J. SMITH IV, ISB #6997
LUKINS & ANNIS, P.S.
Suite 502, 601 E. Front Avenue
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Email: pjs@lukins.com and mfulgham@lukins.com

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
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LILLEMORE DONALD, husband and wife;
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GIANOTTI, Trustees of the Gianotti
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RUSSELL M. WICKS AND EVELYN L.
WICKS, husband and wife; BUDDY C.
STANLEY AND JUDITH L. STANLEY,
Trustees of the Stanley Family Trust dated
February 26, 2004; CRAIG R. FALLON AND
M. ELLEN FALLON, husband and wife,

Plaintiffs,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
an Idaho limited liability company,

Defendant.

NO. CV-2011-2786

**LEGAL MEMORANDUM IN
SUPPORT OF MOTION FOR
RECONSIDERATION**

LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION: 1

0962

 **ORIGINAL**

Plaintiffs seek reconsideration of this Court's Final Judgment entered February 8, 2012. Pursuant to Idaho Rule of Civil Procedure 11(a)(2)(B), Plaintiffs move this Court to reconsider its decision based upon new evidence. Grounds for reconsideration exist based upon the pleadings and affidavits on file, the land use legal authorities cited in this Memorandum, together with new factual and legal evidence contained in the Affidavit of Jay Lockhart, Exhibits A-D, including the Kootenai County Board of County Commissioners' Black Rock PUD Orders of Decision, the Kootenai County Zoning Ordinance governing PUDs, and the approved PUD development plan and subdivision plats for the Black Rock PUD. Based upon this new evidence, under the governing land use laws and regulations, it is clear Defendant's property does not qualify and is not eligible for development and sale. As a result, Defendant fails to qualify as a Successor Declarant and should not be granted control over the Black Rock Development.

INTRODUCTION

In summarily dismissing Plaintiffs' claims, the Court previously failed to consider and analyze the land use implications of Defendant's purported intent to develop and sell its Black Rock Club Property. Reconsideration requires a focus on the following factors:

- A. A Successor Declarant must take title to property for development and sale.
- B. Kootenai County Planning and Zoning approvals for development limit the intended and allowed uses. Based on the residential zoning, residential use governs all future development and sale of the Property.
- C. The Black Rock Project was expressly intended to be developed and sold as "a family oriented residential development."

LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION: 2

- D. All Black Rock Property intended for future development and sale is clearly depicted and described as “Future Open Space and Residential Lots” on the recorded PUD plan and subdivision plats. This property has been developed and sold therefore, Defendant did not take title to any designated future development land.
- E. Defendant does not have title to any residential land; nor does Defendant have title to any land designated as Future Residential Development land; thus under the plat and zoning restrictions, Defendant is legally and physically incapable of accomplishing any intent for development and sale of Black Rock Development property.
- F. Defendant does not qualify as a Successor Declarant.

APPLICABLE RULE

Idaho Rule of Civil Procedure 11(a)(2)(B) permits Plaintiffs to move this Court to reconsider an interlocutory order until fourteen days after a final judgment has been entered. The Court should consider new evidence bearing on the correctness of a summary judgment order if the motion to reconsider is filed. *I.R.C.P. 11(a)(2)*; *See PHH Mortg. Servs. Corp. v. Perreira*, 146 Idaho 631, 635, 200 P.3d 1180, 1184 (2009); *see also Coeur d’Alene Mining Co. v. First Nat’l Bank of N. Idaho*, 118 Idaho 812, 822, 800 P.2d 1026, 1036 (1990). A district court is obligated to consider new evidence submitted with a reconsideration motion. *Barmore v. Perrone*, 145 Idaho 340, 344, 179 P.3d 303, 307 (2008).

LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION: 3

On a motion for reconsideration of the specification of facts deemed established pursuant to I.R.C.P. 56(d), the trial court should reconsider those facts in light of any new or additional facts that are submitted in support of the motion. This view of the effect of I.R.C.P. 11(a)(2)(B) is consistent with the discussion of reconsideration in *J.I. Case Company v. McDonald*, 76 Idaho 223, 280 P.2d 1070 (1955). There, the Court said:

A rehearing or reconsideration in the trial court usually involves new or additional facts, and a more comprehensive presentation of both law and fact. Indeed, the chief virtue of a truth may be ascertained, and justice done, as nearly as may be.

Id. at 229, 280 P.2d at 1073; *Coeur d'Alene Mining Co. v. First Nat. Bank of North Idaho*, 118 Idaho 812, 800 P.2d 1026 (1990).

LEGAL ARGUMENT

A. To Qualify as the "Successor Declarant" under Section 2.50 and Section 27.7 of the Declaration, Defendant Must Take Title to the Property for the Purpose of Development and Sale. It Did Not.

Section 2.50 of the Declaration defines "Successor Declarant" as any party or entity:

[T]o whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as permitted by Section 27.7 and evidenced by an assignment or deed of record in the office of the recorder of Kootenai County, Idaho, designating such party as a Successor Declarant, signed by the transferor and the transferee. Upon such recording, Declarant's rights and obligations under the Declaration will cease and terminate to the extent provided in such document, and all such rights and obligations shall be transferred to and assumed by the Successor Declarant to the extent provided in such document. (Emphasis added).

To be effective, any assignment of Declarant Rights must be permitted by Section 27.7.

Section 27.7 states, in its entirety:

Assignment. Declarant may assign all or any part of the special Declarant rights or any of Declarant's other rights and reservations hereunder to any successor

LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION: 4

who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor will be identified, the particular rights being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the recorder of Kootenai County, Idaho. (emphasis added).

Contrary to the Declaration requirements, Defendant took title to only a very small portion of the Black Rock Development Property which property is physically and legally incapable of further development and sale. As a successor-in-interest to the property owned by The Club at Black Rock, LLC, Defendant only took title to the very limited "Club Property." The Club Property is defined in Section 2.17 as:

All the real Property owned by The Club or its successor or assigns plus all the recreational and social facilities and maintenance facilities constructed thereon, which shall be operated by The Club or its successors or assigns and commonly known as The Club at Black Rock, including without limitation the golf course, the golf clubhouse, golf practice facilities, golf maintenance facilities, tennis courts, swimming pool, private beach, and any other recreational facilities offered by The Club. THE CLUB PROPERTY IS NOT COMMON AREA. (emphasis added).

This Court properly held that Defendant took title to part of the Property when it purchased the Club Property. However, because title to this land was not purchased with the intent for future development or sale, (nor is such land physically or legally capable of further development or sale) Defendant does not and cannot qualify as a Successor Declarant under Section 27.7. Defendant should not be granted Successor Declarant control over the Black Rock Project.

- B. Development within the Black Rock PUD is Intended and Legally Required to Comply with Residential Development Standards. Defendant Cannot Develop and Sell Its Property in Compliance with Kootenai County's Residential Zoning Development Standards.

LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION: 5

New evidence submitted in the Affidavit of Jay Lockhart demonstrates the Black Rock Development property is zoned and approved for residential development. *Lockhart Affidavit, pg. 3, para. 8, Exhibit B.* Based upon the property's residential zoning, all development and sales activities within the Black Rock property must comply with Kootenai County's residential zoning requirements. Defendant's property is physically and legally incapable of complying with the governing residential development standards. Thus, as a matter of land use law, Defendant is unable to further develop and sell its Black Rock Property and cannot qualify as a Successor Declarant.

From its inception, the Black Rock Development was always intended as a residential development. In early 2000, the Kootenai County Board of County Commissioners approved the Black Rock Planned Unit Development (hereinafter "PUD") as **a 674 acre residential development** consisting of a maximum of 381 single-family dwellings, including 177 high-density residential units such as zero lot line homes, condominiums, timeshares and/or pooled units. In addition to the 381 residences, the Black Rock PUD included some limited additional recreational facilities such as a golf course, clubhouse/restaurant, pool, tennis courts, and sales office. *Lockhart Affidavit, pg. 2, para. 6.* The Black Rock Property is located within Kootenai County's Restricted Residential and Rural zones. *Lockhart Affidavit, pg. 3, para. 8, Exhibit B.*

Exhibit A to the Lockhart Affidavit is Kootenai County Zoning Ordinance 159. Section 8 thereof governs development within the Restricted Residential Zone and provides as follows:

SECTION 8.00 RESTRICTED RESIDENTIAL ZONE

LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION: 6

The “Restricted Residential zone” is a land use classification for a district suitable for residential use which is, or will become, a one- or two-family unit living area. Uses are limited to residential uses.

Lockhart Affidavit, pg. 3, para. 7, Exhibit A, Zoning Ordinance, pg. 26. Section 8.09 of the Zoning Ordinance conditionally allows golf courses and driving ranges in these residential developments, however general commercial uses are prohibited. *Id.*; at pg. 28.

Section 13 of the Kootenai County Zoning Ordinance 159 governs development in the Rural Zone and provides as follows:

SECTION 13.00 RURAL ZONE

The “Rural zone” is a classification for a district suitable for rural uses such as: limited agricultural pursuits including livestock production and forestry.

SECTION 13.02 SITE AREA

Sixty-five (65%) percent of the area of all sites shall be left in open space free from structures.

The following uses are permitted in the Rural Zone:

J. Residential Uses:

- 1. Single-Family**
- 2. Duplex – Two Family Residence**
- 3. Manufactured Home Units – A Manufactured Home as a single residence.**

Commercial uses are prohibited and no conditional use exists for a golf course in this Zone. *Id.*

Kootenai County Zoning Ordinance 159, Chapter 15 governs PUDs, including the Black Rock PUD. *Lockhart Affidavit, pg. 3, para. 7, Exhibit A (emphasis added).* Section 15 sets out the standards governing the Black Rock PUD Project and expressly incorporates the

LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION: 7

underlying zoning restrictions and limitations on use for the benefit of residential users.

Lockhart Affidavit, pg. 3, para. 7, Exhibit A, Zoning Ordinance, pg. 51.

SECTION 15.01 PURPOSE AND INTENT

The Planned Unit Development is designed to provide for small and large scale developments, incorporating a single type or a variety of uses, which are planned or developed as a unit. Such development may consist of individual lots or it may have common building sites. Common open space for recreational purposes may be an element of the development.

The Planned Unit Development may also provide public facilities, parks, playgrounds, recreational areas, or reservation of areas for educational and governmental facilities. The Planned Unit Development shall be governed by the requirements of this Article. A Planned Unit Development overlay may be permitted in any zone.

SECTION 15.02 USES PERMITTED

The primary uses in any Planned Unit Development will be in conformance with those allowed in the underlying zone or zones.

- A. In any zone, **the Board may also permit such additional uses** as churches, public schools, **golf courses**, and community clubs, **provided they are compatible and harmoniously incorporated into the design of the Planned Unit Development.** **Such additional uses shall not,** by reason of their location, construction, manner, or timing of operation, signs, lighting, parking arrangements, or other characteristics, **have adverse effects on the residential uses within or adjoining the property, or create traffic congestion or hazards to vehicular or pedestrian traffic.**
- B. **In Residential zones, convenience shops intended for the principal use of occupants of the residential units,** may be located within a multiple dwelling, administration, or community building of the development.

Lockhart Affidavit, Exhibit A, Zoning Ordinance, pg. 51, Planned Unit Development, (emphasis added).

LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION: 8

Thus, as a residential PUD based upon Kootenai County residential zoning standards, any future development within the Black Rock project is restricted to primarily residential development, with some limited conditional land use allowed for the golf course, so long as the golf course **“shall not have adverse effects on the residential uses.”** Development of any limited commercial uses must be intended for **the principal use of occupants of the residential units.** *Id. at Section 15.02 (emphasis added).*

Should Defendant attempt any further development or sale of property in these residential zones, Defendant would need to comply with the land use and zoning restrictions set out above. However, because Defendant’s land is already fully occupied as a golf course, Defendant cannot alter its existing and platted use to fit the residential zoning requirements stated above. As a result, no further development or sale of Defendant’s golf course property is permitted under the restricted zoning set out in Kootenai County Ordinance 159.

Even if the Defendant actually took title to a portion of land capable of residential development (which it did not), Defendant would still face monumental obstacles to any future development and sale. To change any of the golf course property boundaries for future development and sale, Defendant would have to go through a public hearing process before the Board of County Commissioners. The land use law set out in Zoning Ordinance Section 15.08 governs changes to PUD platted property. In seeking any rearrangement of lots, blocks, building tracts, or any other change to the final Black Rock PUD development plan, Defendant would need to move to amend the PUD and go through another public hearing process.

LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION: 9

Section 15.08 prohibits any property reconfiguration without approval from the Board of County Commissioners, providing:

SECTION 15.08 CONDITIONS

- A. Minor changes in location and height of buildings and structures may be authorized by the Planning and Building Departments, if required by engineering or other circumstances not foreseen at the time the final development plan was approved.
- B. **All other changes in use, any rearrangement of lots, blocks, and building tracts, any changes in the provisions of the open space, and all other changes in the approved final development plan must be approved by the Board after being considered under the procedures authorized by Article 27 of this Ordinance. No amendments may be made in the approved final development plan unless they are showing to be required by changed in conditions.**

Lockhart Affidavit, Exhibit A, Zoning Ordinance, pg. 56, Planned Unit Development, (emphasis added).

In early 200, by applying the above land use standards, the Kootenai County Board of County Commissioners approved the Black Rock PUD and issued its first Order of Decision in Case No. PUD-037-99. *Lockhart Affidavit, pg. 3, para. 8, Exhibit B.* The Commissioner's Order of Decision clearly indicates this is predominantly a residential development, making the following Findings of Fact:

2.03 Proposal: The Applicant is proposing to construct an **18 hole public golf course, clubhouse/restaurant, pro shop/grill, equestrian center, recreational center with swimming pool and tennis courts, convenience store, leasing office, and other related structures and uses along with a maximum of 204 single family dwellings including 177 high-density residential units, to be platted through the County's subdivision process. The high-density homes may consist of zero lot line homes, condominiums, timeshares and/or pooled units.**

LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION: 10

2.04 Phasing and Development Schedule: The Applicant's narrative states that the proposal has been divided into 2 Phases, to be completed as follows:

Phase One: Site disturbance will begin in the spring of 2000. Development of the golf course is anticipated to begin in the spring of 2001, and it will take approximately two years for the seeding of the fairways and greens to be complete. During this phase, Clubhouse Drive will be constructed and underground sewer and water lines will be installed. **Successive roadways will be constructed and paved as they are developed to accommodate residential construction.** Heavy truck traffic is anticipated during construction, therefore improvements to Loffs Bay Road and Rockford Bay Road are proposed to be completed once the golf course opens. The construction of the fire station will be concurrent with the clubhouse. The sales office and maintenance building will also be constructed during this phase.

The overall project density is approximately 1.8 acres per home site using the calculation of 381 living units and 674 acres. (Emphasis added).

Phase Two: **Residential development will begin in Phase Two. The Applicant's narrative states that 20 to 50 residential units will be constructed each year for 7 – 10 years.** The convenience store is expected to be completed during this phase. The recreational center and equestrian center will also be included in this phase.

2.07 Zoning: The site and surrounding area is zoned both Rural and Restricted Residential. Of the total 674 acres at the project site, 538 acres are zoned Rural while the remaining 136 acres are zoned Restricted Residential.

See Lockhart Affidavit, Exhibit B, PUD-037-99, Order of Decision, Sections 2.03, 2.04 and 2.07 (emphasis added).

Clearly, the nature and scope of this Development is intended to be limited to residential property development and sale. The golf course, and this Defendant's purported intent to sell golf course memberships, is not even mentioned as part of the Project's intended development and sales plan. Contrarily, the obviously stated intent is to develop and sell a massive

LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION: 11

residential project with "381 living units...on 674 acres...at a rate of 20 to 50 residential units per year for the next 7 to 10 years." *Id. Lockhart Affidavit, Exhibit B, Section 2.04.*

Also, contrary to Defendant's claim that it can sell any personal property and qualify as Successor Declarant, the Board of County Commissioners expressly limited commercial sales activity in the Conditions of Approval for the PUD, stating:

6.06 All retail sales within the clubhouse, recreational center and concession located at the lake front, **are limited to small ticket items and confectioneries** directly associated with the facilities' use in which they are located.

Lockhart Affidavit, Exhibit B, PUD-037-99, Order of Decision, Section 6.06 (emphasis added).

Based upon these express Findings of Fact, (specifically including the residential housing requirements for the PUD) and the Conditions of Approval (limiting clubhouse and golf course sales to "small ticket items and confectioneries" only, in Section VI of the Order of Decision, the County Commissioners APPROVED the Black Rock PUD. Under the Commissioners' ruling, this Defendant does not own any real property capable of development and sale for any residential use, and its personal property sales are severely restricted; as a result, Defendant does not have sufficient Black Rock Property to develop and sell and Defendant fails to qualify as a Successor Declarant.

On December 20, 2000, the Kootenai County Board of County Commissioners issued a Modified Order of Decision for the Black Rock PUD, Planning Department Case No. PUD-037-99. *Lockhart Affidavit, pg. 3, para. 10, Exhibit C, Modified Order of Decision.* The Commissioners' Modified Order of Decision makes the following Findings of Fact:

LEGAL MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION: 12

11995

2012 MAR 16 PM 3:29

CLERK DISTRICT COURT
Kristen Deed
DEPUTY

MISCHELLE R. FULGHAM, ISB #4623
PETER J. SMITH IV, ISB #6997
LUKINS & ANNIS, P.S.
601 E. Front Avenue, Suite 502
Coeur d'Alene, ID 83814-5155
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Email: pjs@lukins.com and mfulgham@lukins.com

Attorneys for Appellants

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
limited liability company; ROBERT C.
SAMUEL; JOE K. DONALD AND LISBETH
LILLEMORE DONALD, husband and wife;
WAYNE A. GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29, 1991;
RUSSELL M. WICKS AND EVELYN L.
WICKS, husband and wife; BUDDY C.
STANLEY AND JUDITH L. STANLEY,
Trustees of the Stanley Family Trust dated
February 26, 2004; CRAIG R. FALLON AND
M. ELLEN FALLON, husband and wife,

Appellants,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
an Idaho limited liability company,

Respondent.

NO. CV-2011-2786

NOTICE OF APPEAL

NOTICE OF APPEAL: 1

TO: THE ABOVE-NAMED RESPONDENT THE GOLF CLUB AT BLACK ROCK, LLC,
AN IDAHO LIMITED LIABILITY COMPANY AND ITS ATTORNEY OF RECORD
JOHN F. MAGNUSON AND THE CLERK OF THE ABOVE-ENTITLED COURT.
NOTICE IS HEREBY GIVEN THAT:

1. The Appellants to this action are: SKY CANYON PROPERTIES, LLC, an Idaho limited liability company; ROBERT C. SAMUEL; JOE K. DONALD AND LISBETH LILLEMORE DONALD, husband and wife; WAYNE A. GIANOTTI AND CAROLYN M. GIANOTTI, Trustees of the Gianotti Revocable Trust U-A dated January 29, 1991; RUSSELL M. WICKS AND EVELYN L. WICKS, husband and wife; BUDDY C. STANLEY AND JUDITH L. STANLEY, Trustees of the Stanley Family Trust dated February 26, 2004; and CRAIG R. FALLON AND M. ELLEN FALLON, husband and wife.

2. The above-named Appellants appeal against the following party characterized as Respondent here: THE GOLF CLUB AT BLACK ROCK, LLC.

3. The above-named Appellants appeal to the Idaho Supreme Court from the Final Judgment entered by the District Court on February 8, 2012, the Honorable John T. Mitchell presiding. Therein, the District Court granted summary judgment and dismissed Appellants' claims in their entirety.

4. The above-named Appellants have a right to appeal to the Idaho Supreme Court. The Final Judgment described in paragraph 3 above is appealable under the Idaho Appellate Rules, including but not limited to Idaho Appellate Rules 11(a)(1).

NOTICE OF APPEAL: 2

5. The issues on appeal shall include, but not be limited to, the following:
- a) Whether the District Court erred in granting summary judgment by determining that no genuine issues of material fact existed;
 - b) Whether the District Court erred in dismissing Appellants' claims as a matter of law;
 - c) Whether the District Court erred in holding that the "Declaration of Covenants, Conditions and Restrictions of Black Rock, A Planned Unit Development" was not ambiguous;
 - d) Whether the District Court erred in holding that Respondent The Golf Club at Black Rock, LLC is, as a matter of law, qualified as Successor Declarant for all purposes under the "Declaration of Covenants, Conditions and Restrictions of Black Rock, A Planned Unit Development," recorded as Kootenai County Instrument No. 1689309; and
 - e) Whether the District Court erred in granting the Respondent Successor Declarant status and control over the entire the Black Rock Planned Unit Development.

6. No order has been entered sealing all or any portion of the record.

7. Appellants request the preparation of the following portions of the Reporter's

Transcript in both hard copy and electronic format:

NOTICE OF APPEAL: 3

a. Summary Judgment hearing held on November 16, 2011.

8. The Appellants further request the following documents be included in the clerk's (agency's) record in addition to those automatically included under Idaho

Appellate Rule 28:

NO.	FILED/ ENTERED	DOCUMENT
1.	4/1/11	Complaint
2.	4/1/11	Summons
3.	4/15/11	Acceptance of Service
4.	4/21/11	Notice of Appearance
5.	4/21/11	Motion for Disqualification
6.	4/22/11	Order on Defendant's Motion for Disqualification
7.	4/22/11	Order Assigning District Judge on Disqualification Without Cause
8.	5/5/11	Answer and Counterclaim
9.	5/16/11	Notice of Scheduling Conference
10.	5/25/11	Stipulation for Scheduling
11.	6/3/11	Plaintiffs' Reply to Counterclaim
12.	6/27/11	Scheduling Order and Notice of Trial
13.	7/27/11	Notice of Intention to Take Deposition – August 30, 2011 @ 9:00 am
14.	10/3/11	Motion for Extension of Time to Respond to Discovery
15.	10/3/11	Affidavit of John Magnuson in Support of Motion for Extension of Time
16.	10/12/11	Notice of Withdrawal of Motion for Extension of Time
17.	10/19/11	Plaintiff's Motion for Summary Judgment
18.	10/19/11	Plaintiff's Memorandum in Support of Motion for Summary Judgment
19.	10/19/11	Affidavit of Peter Smith
20.	10/19/11	Plaintiff's Submission of Certified Documents
21.	10/19/11	Notice of Hearing – November 16, 2011 @ 4:00 pm

NOTICE OF APPEAL: 4

22.	10/19/11	Defendant's Motion for Summary Judgment
23.	10/19/11	Memorandum in Support of Defendant's Motion for Summary Judgment
24.	10/19/11	Affidavit of Roger Rummel in Support of Motion for Summary Judgment
25.	10/19/11	Affidavit of John Magnuson in Support of Motion for Summary Judgment
26.	10/19/11	Notice of Hearing - November 16, 2011 @ 4:00 pm
27.	11/3/11	Plaintiff's Objection to Defendant's Motion for Summary Judgment
28.	11/3/11	Memorandum in Opposition of Plaintiff's Motion for Summary Judgment
29.	11/3/11	2 nd Affidavit of John Magnuson in Opposition to Plaintiff's Motion for Summary Judgment
30.	11/4/11	Motion to Strike
31.	11/4/11	Notice of Hearing – November 16, 2011 @ 4:00 pm
32.	11/10/11	Memorandum in Opposition to Plaintiffs' Motion to Strike
33.	11/10/11	Reply to Opposition to Motion for Summary Judgment by Defendant
34.	12/13/11	Memorandum Decision and Order on Motion to Strike, and on Cross-Motions for Summary Judgment
35.	12/22/11	Memorandum of Attorney's Fees and Costs
36.	12/22/11	Affidavit of Magnuson in Support of Fees and Costs
37.	1/10/12	Stipulation
38.	2/8/12	Final Judgment
39.	2/22/12	Motion for Disqualification
40.	2/22/12	Memorandum in Support of Motion for Disqualification
41.	2/22/12	Affidavit of Peter Smith in Support of Motion for Disqualification
42.	2/22/12	Motion for Reconsideration of Final Judgment Entered 2/8/12
43.	2/22/12	Affidavit of Jay Lockhart in Support of Motion for Reconsideration
44.	3/7/12	Legal Memorandum in Support of Motion for Reconsideration

NOTICE OF APPEAL: 5

9. I certify:

a) That a copy of this Notice of Appeal has been served on the court reporter of whom a transcript has been requested as named below at the address set out below:

Julie Foland, P.O. Box 9000, Coeur d'Alene, Idaho 83816-9000

b) That the Clerk of the District Court for Kootenai County has been paid the estimated fee for the preparation of the Reporter's Transcript.


c) That the estimated fee for preparation of the Clerk's Record has been paid.

d) That the appellant filing fee has been paid; and

e) That service has been made on all parties required to be served pursuant to Idaho Appellate Rule 20.

Dated this 15 day of March, 2012.

LUKINS & ANNIS, P.S.

By 
MISCHELLE R. FULGHAM, ISB # 4623
PETER J. SMITH
Attorneys for Plaintiffs

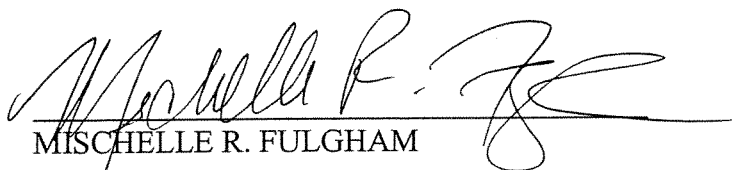
NOTICE OF APPEAL: 6

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of March, 2012, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

John F. Magnuson
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, Idaho 83814

- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☒ Telecopy (FAX) 208-667-0500


MISCHELLE R. FULGHAM

NOTICE OF APPEAL: 7

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho limited
liability company; ROBERT C. SAMUEL; JOE K. DONALD)
AND LISBETH LILLEMORE DONALD, husband and)
wife; WAYNE A. GIANOTTI AND CAROLYN M.)
GIANOTTI, Trustee of the Gianotti Revocable Trust U-A)
dated January 29, 1997; RUSSEL M. WICKS AND EVELYN)
L. WICKS, husband and wife; BUDDY C. STANLEY AND)
JUDITH L. STANLEY, Trustees of the Stanley Family)
Trust dated February 26, 2004; CRAIG R. FALLON AND)
M. ELLEN FALLON, husband and Wife)

Plaintiffs/Appellants)

v)

THE GOLF CLUB AT BLACK ROCK, LLC, an)
Idaho limited liability company,)

Defendants/Respondents)

SUPREME COURT NO
39831-2002

Attorney for Appellant

Peter J. Smith
601 E Front Ave., Ste 502
Coeur d'Alene, ID 83814

Attorneys for Respondents

John F. Magnuson
PO Box 2350
Coeur d'Alene, ID 83814

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at
Kootenai, Idaho this 24th day of May, 2011.

CLIFFORD T. HAYES
Clerk of the District Court

By: Debra D. Jew
Deputy Clerk

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho limited
liability company; ROBERT C. SAMUEL; JOE K. DONALD)
AND LISBETH LILLEMORE DONALD, husband and)
wife; WAYNE A. GIANOTTI AND CAROLYN M.)
GIANOTTI, Trustee of the Gianotti Revocable Trust U-A)
dated January 29, 1997; RUSSEL M. WICKS AND EVELYN)
L. WICKS, husband and wife; BUDDY C. STANLEY AND)
JUDITH L. STANLEY, Trustees of the Stanley Family)
Trust dated February 26, 2004; CRAIG R. FALLON AND)
M. ELLEN FALLON, husband and Wife)

Plaintiffs/Appellants)

v)

THE GOLF CLUB AT BLACK ROCK, LLC, an)
Idaho limited liability company,)

Defendants/Respondents)

SUPREME COURT NO
39831-2002

CLERK'S CERTIFICATE OF SERVICE

I, Clifford T. Haynes, Clerk of District Court of the First Judicial District of the State of Idaho, in
and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States
mail, one copy of the Clerk's Record to each of the Attorneys of Record in this cause as follows:

Attorney for Appellant

Peter J. Smith
601 E Front Ave., Ste 502
Coeur d'Alene, ID 83814

Attorneys for Respondents

John F. Magnuson
PO Box 2350
Coeur d'Alene, ID 83814

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at
Kootenai, Idaho this _____ day of _____, 2012.

CLIFFORD T. HAYES
Clerk of the District Court

By: _____
Deputy Clerk